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# OVERVIEW OF THE JUSTICE SECTOR

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# 2016



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## EXECUTIVE SUMMARY

In 2016, the justice sector showed development in several areas while experiencing challenges in other areas. Positive progress made by the justice sector included the consideration and application of CEDAW in several gender-based violence cases, the commencement of legislative review by the Legislative Reform and Justice Sector Commission, and the Dili District Court decision in the corruption case involving the former Minister of Finance and Former Vice-Minister of Health.

The challenges encountered by the justice sector included: a significantly reduced budget, limitations with infrastructure and human resources, a lack of interpreters for local languages, and problems with the implementation of the Law on Witness Protection.

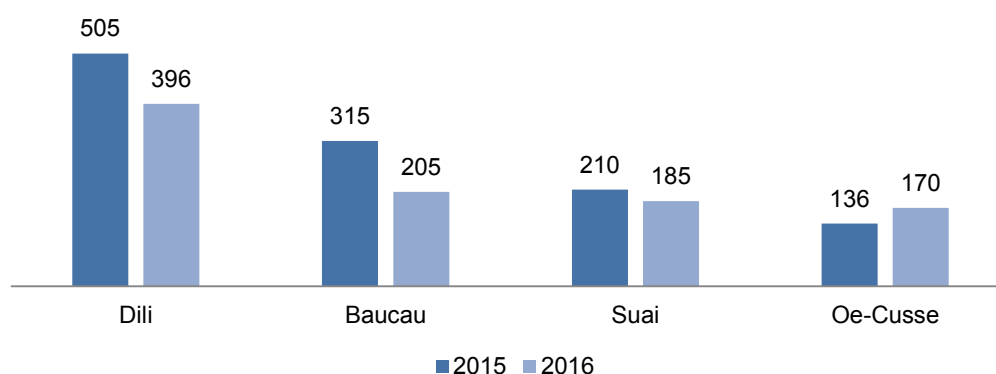
During the last year, JSMP continued to monitor the broader justice sector, including its annual budget allocation, infrastructure and other resources, the number of court actors, the training of court actors and the ongoing issue of language.

JSMP also monitored cases in all courts to ensure the transparency and proper functioning of this sector. In 2016, JSMP monitored 957 cases, comprising 941 criminal cases and 16 civil cases, a decrease from the 1166 cases JSMP monitored in 2015. The volume of cases JSMP monitored decreased due to limitations with resources. There was a reduction in the number of cases monitored by JSMP in three out of the four District Courts. However, in the Oe-Cusse District Court, JSMP increased the number of cases monitored from 136 cases in 2015 to 170 cases in 2016.

**Table 1: Total number of cases monitored by JSMP in 2016 compared to 2015**

Case type	2015	2016
Criminal	1138	941
Civil	28	16
<b>Total</b>	<b>1166</b>	<b>957</b>

**Graph 1: Total number of District Court cases monitored by jurisdiction by JSMP in 2015 and 2016**



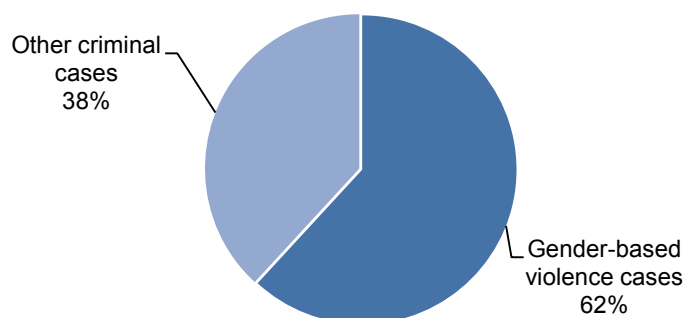
Statistics relating to the cases monitored by JSMP in 2016, and the number of cases heard by the courts in 2016, can be seen at **Annexure A**.

In addition to monitoring the District Courts, JSMP monitored the Mobile Courts and the Court of Appeal. JSMP monitored 145 Mobile Court cases in 2016, in comparison with 238 cases in 2015. The decrease in the number of cases JSMP monitored in the Mobile Courts is principally due to the Mobile Courts not operating between April and June 2016 due to financial constraints.

In 2016, the Court of Appeal registered 222 new criminal cases. There were also pending from 2015, 30 criminal cases and 44 civil cases. Because the Court of Appeal continues to decide most cases by examination of the proceedings through deliberations, JSMP was only able to monitor 1 case in 2016.

Included in this report is an analysis of the progress towards achieving gender equality in Timor-Leste. As shown in Graph 2, the number of gender-based violence cases continues to be high throughout all courts, when compared to other types of criminal cases.

**Graph 2: Gender-based violence cases against women and girls compared to other criminal cases monitored by JSMP in 2016**



JSMP observed through its case monitoring certain trends in the charging and sentencing of domestic violence and sexual violence cases. Of concern was the continued misunderstanding by public prosecutors of the distinction between Articles 145, 146 and 154 of the Penal Code in cases of domestic violence. The need for the development and implementation of a system that ensures the effective monitoring of defendants and their compliance with the certain conditions or rules of conduct imposed on them for the duration of their suspended sentence is outlined in this section. Also included is an analysis of the progress made in 2016 with the implementation of the CEDAW Committee recommendations, and the importance of implementing those recommendations related directly to improving access to justice for women.

Children's access to justice and the progress made in the formal justice sector is analysed by JSMP in the next section. Based on JSMP's monitoring in 2016, there has been progress made in the sentencing of perpetrators of violence against children. However, JSMP is concerned that some perpetrators are receiving prison sentences which neither reflect the gravity or circumstances of the case, as reflected in the case study included by JSMP. Specific focus is paid to the need to identify and apply aggravating articles of the Penal Code in cases of incest; and why cases of violence against children should not be resolved through dispute resolution mechanisms. In 2016, progress was made towards the incorporation of the principles from the Convention on the Rights of the Child into national law. JSMP examines the progress made with the draft Law on Child Protection and the National Action Plan of the Child.

A serious challenge to the effective participation of witnesses and victims is the current lack of witness protection measures in criminal and civil proceedings. In this section, JSMP outlines a number of measures which the State can implement so to ensure witnesses and victims feel safe during proceedings. One such measure is implementing the Law on Witness Protection. However, to date this law has not been properly implemented.

In 2016, JSMP monitored several important cases involving State authorities. The issue of immunity for Members of Parliament or Government continued to be of significance. The impact of Isabel Ximenes and Vicente Guterres' claims of immunity from their respective criminal cases is analysed in this section. JSMP monitored 10 corruption cases in 2016, including the case involving the former Minister of Finance, Emilia Pires, and the former Vice-Minister of Health, Madalena Hanjam. JSMP provides a

detailed analysis of the legal facts, court proceedings and decision in this case. An analysis of the Appeal case involving Calistro Gonzaga, the former Commander of PNTL, is also included.

In addition to observing the justice sector, JSMP also continued to observe the National Parliament, with a specific focus on the plenary and Committee A. The productivity of the National Parliament's law-making in 2016 increased in comparison with other years. In 2016, the National Parliament discussed, debated and approved 13 draft laws as well as 17 resolutions. However, a number of important draft Government and Parliamentary laws remained pending in 2016.

JSMP hopes that this *Overview of the Justice Sector 2016* will inform the public about the current state of Timor-Leste's justice system, its recent achievements and the ongoing challenges it faces. Through this report, JSMP has sought to provide analysis and recommendations relevant for all the key institutions to review. Some of these recommendations are similar to observations made in 2015 because there have not yet been changes to the systems and services of these State bodies and institutions.

The recommendations identified by JSMP in this report are as follows:

### **Key developments in the justice sector**

1. The co-operation protocol, between Timor-Leste and Portugal, in the area of justice must be implemented immediately.
2. The Legal Training Centre must recruit capable and experienced trainers, and then immediately recommence the training course for new Timorese magistrates.
3. The mandate of the Legislative Reform and Justice Sector Commission must be extended beyond August 2017.
4. The Government must review and set about implementing the recommendations by the Commission on reforming criminal law in Timor-Leste.
5. The Government, especially the Ministry of Justice, must work with State institutions and civil society organisations to implement the recommendations made by the Working Group of the UN Human Rights Council.

### **Resources of the justice sector**

6. The Government and National Parliament should allocate sufficient funds to the Office of the Prosecutor-General and the Office of the Public Defender so to ensure they can fulfil their mandate and provide legal assistance to those in need.
7. Sufficient funds must be allocated to allow the Courts to recruitment more court clerks and administrative staff.
8. The Government must ensure that the Legal Training Centre recommences training immediately and is provided with appropriate resources to train additional legal students in the future.

### **Mobile Courts**

9. The District Courts must give appropriate time to each case heard in the mobile courts.
10. Mobile Court cases must be heard by the District Courts in appropriate locations, which allow for proceedings to be closed to the public.

### **Court of Appeal**

11. The Court of Appeal should conduct more hearings and allow those proceedings to be accessed by court monitoring to ensure they are transparent and open to public scrutiny.

### **Language**

12. Training must be provided to all official court interpreters so to increase their legal knowledge and understanding of legal terminology.
13. The courts must find additional official interpreters to translate court proceedings in to and from local languages.

### **Gender equality**

14. The Office of the Prosecutor General should develop a legal guideline that outlines the key elements of Article 145, 146 and 154 of the Penal Code, presents case examples where defendants have been correctly charged, and provides guidance as to sentencing submissions.
15. A monitoring system must be developed and implemented to ensure defendants comply with the certain conditions or rules of conduct imposed on them for the duration of their sentence.
16. When a defendant fails to comply with the conditions or rules of conduct imposed on them, then the court must amend or revoke the defendant's suspended sentence in accordance with Articles 72 and 73 of the Penal Code.
17. A sentencing guideline should be developed to ensure consistency in sentencing of sexual violence cases. This guideline should outline general sentencing principles for sexual violence cases, aggravating and mitigating factors using examples, rules for repeat offenders, guidance on alternative penalties and provide for the calculation of civil compensation.
18. The State should take immediate steps to implement the CEDAW Committee's recommendations, especially in relation to:
  - a. Establishing an effective legal aid system which eliminates the economic barriers faced by women in gaining access to justice.
  - b. Allocating extra resources to enhance the infrastructure, quality and accessibility of the formal justice system, particularly in rural areas.
19. The State must ensure there is State funding for independent legal aid organisations helping women.

### **Children in the justice system**

20. In cases of violence against children the Court must impose sentences that protect children from violence and reflects the severity of the crime committed, as well as the psychological and physical trauma suffered by the victim.
21. JSMP encourages the translation of the draft law on child protection into Tetum and English, followed by open consultation so to ensure the draft law is fully compliant with the Convention on the Rights of the Child and responds to the needs of children at risk in Timor-Leste.

### **Witnesses in the justice system**

22. JSMP encourages the courts to apply witness and victim protection measures in every case before the court, especially in cases that endanger the safety of witnesses or victims because of their specific nature, including cases of gender-based violence.
23. JSMP also encourages the Government to set about implementing the Law on Witness Protection.

### **Cases involving State authorities**

24. In accordance with Article 113.1 of the Constitution, Isabel Ximenes must be immediately suspended from her functions as Secretary of State for Arts and Culture. Thereby automatically revoking her immunity as a Government Member and allowing the Dili District Court to hear immediately the case against Isabel Ximenes.

25. The Dili District Court must immediately hear the case against Vicente Guterres, who, in accordance with Article 94 of the Constitution, is not immune from the criminal proceedings commenced against him.
26. Training must be provided to the public prosecutors and judges on how to handle criminal or civil cases against a Member of Parliament or Government; specifically, with regard to the immunity and when this must be revoked.

**Political and legislative development**

27. In order to give timely attention to important legislative and policy issues, the National Parliament must adhere to the working hours of the plenary and Committees, as set out in Law No. 15/2009.
28. The Government and National Parliament should give priority to those draft laws that are important to the development of the justice sector, including the draft Anti-Corruption law and the draft law on the creation of a Timorese Bar Association.



## INTRODUCTION

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

JSMP now exists as a Timorese not-for-profit organisation working to improve the judicial and legislative systems in Timor-Leste. Over the last 13 years, JSMP has continued to monitor the justice system in Timor-Leste, as well as advocated to promote transparency and accountability, and uphold the rule of law. JSMP's vision is a democratic society where justice and human rights are guaranteed for all.

In addition to monitoring the courts and National Parliament, JSMP has continued to provide legal education to the community, and conduct advocacy on a number of issues. Charging and sentencing of perpetrators of domestic and sexual violence, the revoking of immunity for Members of Parliament or Government who are charged with corruption, and the need for the implementation of protection measures for witnesses are just three of the many issues that JSMP has advocated on in 2016.

This *Overview of the Justice Sector* report compiles the results of JSMP's observations and evaluations of the developments and challenges that have emerged in the justice system and legislature in 2016. This report includes a number of recommendations that are directed at relevant institutions for their consideration, in order to improve the justice system and the work of the legislature in the future.

JSMP wishes to congratulate all judicial actors for their hard work in 2016, despite facing challenges and a range of limitations. JSMP also wishes to acknowledge our appreciation to the judicial actors who gave their time to collaborate and work effectively with JSMP in 2016.

This report is structured as follows:

### **Section 1 – Status of the justice sector in 2016**

This section discusses developments and challenges encountered by the justice sector in 2016. It focuses specifically on Government policies and efforts in the aftermath of the October 2014 Government and Parliamentary Resolutions; the progress made by the Legislative Reform and Justice Sector Commission in 2016; Timor-Leste's second Universal Periodic Review; and the recent proposed amendments to the law governing the remuneration of principal judicial actors.

This section also outlines the resources and training received by the justice sector in 2016, the results of JSMP's monitoring of the Mobile Courts and Court of Appeal, as well as the ongoing challenge facing the courts about language.

### **Section 2 – Gender equality**

The second section centres on the important issue of gender equality in Timor-Leste, and includes analysis of cases involving violence against women, with a specific focus on domestic and sexual violence cases. Also examined are sentencing trends in these cases in 2016, and the progress made by the State in 2016 with implementing the recommendations of the CEDAW Committee.

### **Section 3 – Children in the justice sector**

Section three outlines children's access to justice and key developments in 2016. It considers the need for prosecutors and the courts to identify and apply aggravating circumstances to the charge against defendants in incest cases. The need for prosecutors and the courts to comply with Article 18 of the Constitution and protect children by not accepting the resolution of violence against children cases through settlement agreements is discussed in this section.

### **Section 4 – Witnesses in the justice sector**

The need for the proper protection of witnesses and victims is the focus of the fourth section. Outlined in this section are a number of protection measures for witnesses and victims that the State can

implement easily and at low-cost. An update on the implementation of the Law on Witness Protection is also contained in this section.

### **Section 5 – Cases involving State authorities**

The fifth section discusses the issue of immunity for Members of Parliament and Government, and the unnecessary delays in revoking a Member's immunity so that they can be tried before the court. Also considered is the issue of corruption by State authorities in Timor-Leste. An analysis of significant cases involving high-level state authorities is included in this section.

### **Section 6 – Political and legislative developments**

This final section outlines the productivity of the National Parliament in 2016, 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 2016. There is also an update on the status of the Law on the Procedure for the Granting of a Pardon and Commutation and the draft law on the creation of a Timorese Bar Association.

This report ends with a conclusion providing a helpful summary of the report's findings and recommendations for improving the justice system in the future. It also includes annexes containing statistics, and further information about cases monitored by JSMP and processed by the courts in 2016.

# 1 STATUS OF THE JUSTICE SECTOR IN 2016

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## 1.1 Key developments in the justice sector

Four key developments in the justice sector in 2016 are as follows:

- The Government policies and efforts in the aftermath of the October 2014 Government and Parliamentary Resolutions.
- The activities of the newly established Legislative Reform and Justice Sector Commission in 2016.
- The second Universal Periodic Review of Timor-Leste, and the preparation of a joint submission on the status of human rights in Timor-Leste by the Timor-Leste Civil Society Coalition.
- Proposed amendments to the remuneration law for judicial magistrates, public prosecutors and public defenders.

### Government policies and efforts following October 2014 resolutions

In October 2014, the Government and National Parliament passed three resolutions to audit the justice sector and remove international advisers and actors from their positions. This resulted in the immediate expulsion of eight international judicial officers<sup>1</sup>, as well as international advisers at the Legal Training Centre not having their contracts renewed and departing Timor-Leste at the end of 2014.

In JSMP's opinion, the resolutions and loss of international judicial actors continued to have a significant ongoing impact on the justice sector in 2016. The departure of the judicial officials resulted in the creation of significant additional work for Timorese judges, prosecutors and staff. Some cases, which were before the court in October 2014 and involved an international judge or prosecutor seem to also have been indefinitely adjourned. JSMP urges the District Courts to reschedule these cases immediately. Cases of 'serious crimes' committed in 1999, such as crimes against humanity, are also unable to be heard as it requires a panel of two international judges and one Timorese judge.<sup>2</sup> This is of great concern for JSMP as it means that the perpetrators of these crimes are not being brought to justice.

Prior to October 2014, the Legal Training Centre conducted training for all judges, prosecutors, public defenders and private lawyers. The training course was primarily led by a number of international magistrate trainers who worked at the Legal Training Centre. These international magistrate trainers all left due to the resolutions, therefore all magistrate's training has been suspended to this date. As a result, there will be a shortage in Timor-Leste of judges, public prosecutors and public defenders in the near future.

In 2016, the Government sought to address some of the problems that have arisen as a result of the October 2014 resolutions. Specifically, they sought to mend the fractured relationship between Portugal and Timor-Leste. In February 2016, the Ministers of Justice for Timor-Leste and Portugal signed the first co-operation protocol in the area of justice since the October 2014 resolutions. The protocol focused on the resumption of assistance with training, mentoring and capacity building in different areas of the justice sector in Timor-Leste. It is hoped that with assistance from Portugal, the Timor-Leste justice

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<sup>1</sup> The eight international judicial officers included five judges, two prosecutors, and an Anti-Corruption Commission investigator.

<sup>2</sup> UNTAET, *Regulation 2000/11 on the Organisation of Courts in East Timor*, UNTAET/REG/2000/11 of 6 March 2000, Sections 9 & 10.3; UNTAET, *Regulation 2000/15 on the Establishment of Special Panels with Exclusive Jurisdiction over Serious Criminal Offences*, UNTAET/REG/2000/15 of 6 June 2000, Section 22; Democratic Republic of Timor-Leste, *Criminal Procedure Code*, Decree Law No. 13/2005 of 3 September 2005, Article 3.

sector will be strengthened. However, to date the co-operation protocol has not yet commenced.<sup>3</sup> JSMP urges the Timor-Leste Government to continue talks with the Portuguese Government and seek to implement the protocol immediately.

JSMP commends the Government for negotiating and signing the co-operation protocol. However, JSMP urges the Government to take alternate measures to address those issues that have arisen due to the October 2014 resolutions. This includes the Legal Training Centre immediately recruiting capable and experienced trainers, and then recommencing the training course for new Timorese magistrates.

#### **Recommendations**

1. The co-operation protocol, between Timor-Leste and Portugal, in the area of justice must be implemented immediately.
2. The Legal Training Centre must recruit capable and experienced trainers, and then immediately recommence the training course for new Timorese magistrates.

#### **Activities of the Legislative Reform and Justice Sector Commission in 2016**

The Legislative Reform and Justice Sector Commission was established by the Government in 2015.<sup>4</sup> The mandate of the Commission is to conduct legislative review and assessment of the implementation of law in Timor-Leste. The legislative review covers laws, decree-laws and decrees. The Commission's purpose is to analyse existing laws in Timor-Leste with the purpose of improving them so they ensure the protection of rights, liberties and guarantees and bring the laws closer to the democratic ideals of Timor-Leste citizens.

However, JSMP is concerned that the Commission's mandate is only until August 2017, when the current Government leaves office. JSMP urges the next Government to extend the mandate of the Commission.

In 2016, the Commission held several meetings and consultation workshops with justice sector actors, Timor-Leste bar associations and civil society organisations. Additionally, the Commission travelled to Portugal and Australia to meet with key justice sector actors in those countries to learn how they have addressed legislative reform.

On 13 May 2016, JSMP met with the Commission and outlined those key areas of concern that in JSMP's opinion need immediate reform. These included, the inclusion of incest as a crime within the Penal Code; the adoption of children's code and law on juvenile justice; and altering the provisions within the Civil Code on marriage. At subsequent consultation workshops with the Commission, JSMP continued to advocate for the key areas of legislative reform summarised in JSMP's submission. In addition, JSMP signed a Memorandum of Understanding with the Commission on 17 November 2016. As a result, JSMP will work with the Commission in facilitating a diagnostic study of the formal justice system in Timor-Leste, and then generate a global strategic vision to be implemented by the Commission, so to strengthen the justice system in Timor-Leste.

In December 2016, the Commission released their recommendations for the reform of criminal law in Timor-Leste. The Commission's recommendations were made after consultation with the justice sector and civil society. In their report, the Commission recommended the inclusion of a separate article in the Penal Code for the crime of incest as well as the inclusion of incest in the Law Against Domestic Violence. The Commission also recommended amendments to those articles in the Penal Code on sexual aggression, sexual exploitation and sexual abuse; as well as amending the age of marriage from 16 to 18 years. JSMP is concerned that the amendments made by the Commission are minor in nature.

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<sup>3</sup> Two Judge Inspectors from Portugal are scheduled to arrive in Timor-Leste in early 2017.

<sup>4</sup> Democratic Republic of Timor-Leste, *Establishing the Commission for Legislative Reform and the Justice Sector*, Government Resolution No. 30/2015 of 26 August 2015.

For example, currently Article 172 requires proof of force or threats to demonstrate lack of consent, which can be difficult to prove. In JSMP's opinion, for Article 172 to comply with international obligations and best practices, it is necessary for the article to be amended to be consent based.<sup>5</sup> However, the Commission did not make this recommendation. JSMP is concerned about this and the fact that instead the Commission made minor recommendations for the reform of Article 172.

JSMP commends the Commission on their efforts in 2016. In particular, JSMP regards a number of the recommendations by the Commission on the reform of criminal law in Timor-Leste are positive and if implemented would ensure Timor-Leste's national law complies with international law. However, JSMP is concerned that a number of important amendments to the Penal Code that need to be made so to ensure compliance with international obligations and best practice, were not recommended by the Commission in their report. JSMP urges the Commission when carrying out any review of Timor-Leste legislation to ensure the recommendations made will result in the legislation complying with international obligations and best practice. As well, JSMP encourages the Government to review the Commission's report and set about amending criminal law in Timor-Leste.

#### Recommendations

3. The mandate of the Legislative Reform and Justice Sector Commission must be extended beyond August 2017.
4. The Government must review and set about implementing the recommendations by the Commission on reforming criminal law in Timor-Leste.

#### Universal Periodic Review

The second Universal Periodic Review (UPR) of Timor-Leste occurred in 2016. The UPR involves assessing the human rights records of Timor-Leste and addressing any human rights violations that may be occurring. The UPR provides an opportunity for the Government of Timor-Leste to declare what action has been taken to improve the human rights situation and the challenges they overcame to ensure the enjoyment of human rights.

Important to the UPR process is NGO participation. NGOs can provide their recommendations as to how the human rights situation in Timor-Leste can be improved by the Government. In March 2016, JSMP, as one of five lead NGOs of the Timor-Leste Civil Society Coalition for the UPR, assisted in the preparation of a joint submission on the status of human rights in Timor-Leste.<sup>6</sup> This submission discussed a number of human rights issues and the action that the State should take. In particular, the submission recommended that the Government should immediately comply with the pledge they made in the first UPR in 2011 to ratify a number of additional human rights instruments.

In November 2011, JSMP participated in the UPR process in Geneva, as part of the Timor-Leste Civil Society Coalition for the UPR. In December 2016, the Working Group of the UN Human Rights Council released their draft report. This report summarised the UPR proceeding for Timor-Leste and made 154 recommendations directed at improving the human rights situation in Timor-Leste.<sup>7</sup>

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<sup>5</sup> JSMP & ALFeLa, *Improving the Penal Code to better protect women and children: Submission to the National Parliament of Timor-Leste*, (January 2015), available at: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>

<sup>6</sup> Timor-Leste Civil Society Coalition, *Timor-Leste's Second Universal Periodic Review (UPR) – Submission by the Timor-Leste Civil Coalition for the UPR*, (March 2016), available at: <http://jsmp.tl/wp-content/uploads/2013/03/ONG-Coalition-on-UPR-2016-Final.pdf>

<sup>7</sup> UN Human Rights Council, *Report on the Working Group of the Universal Periodic Review – Timor-Leste*, 28 December 2016, A/HRC/34/11, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/442/42/PDF/G1644242.pdf?OpenElement>



A number of the recommendations were focused on improving access to justice for victims of gender-based violence<sup>8</sup>, combatting violence against children<sup>9</sup> and strengthening the justice system by establishing legislative and administrative measures to safeguard the independence of judges and lawyers.<sup>10</sup> Other recommendations included ensuring all legal documents, including legislation and draft legislation, are in English and Portuguese<sup>11</sup>; and the ratification by the Government of a number of key international human rights instruments, including the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>12</sup> The Timor-Leste Government has until March 2017 by which to inform the Working Group of its response to the 154 recommendations.

#### Recommendation

5. The Government, especially the Ministry of Justice, must work with State institutions and civil society organisations to implement the recommendations made by the Working Group of the UN Human Rights Council.

#### Draft Remuneration Law for Judicial Magistrates, Public Prosecutors and Public Defenders

Judges, Public Prosecutors and Public Defenders receive different levels of remuneration; however, everyone within each category receives the same level of remuneration regardless of experience or the length of their employment. This flat pay structure means that senior court actors who are more experienced and will investigate and try the complex cases, receive the same remuneration as their colleagues.

To overcome the problems that arise from this flat pay structure, a draft law to amend the existing law on remuneration for court actors has been developed by the Ministry of Justice. Additionally, the Ministry of Justice has drafted a law amending the existing law on recruitment of court actors. Both draft laws were submitted to the National Parliament in September 2016, and forwarded to Committee A for consideration on 21 September 2016. On 13 October 2016, Committee A held a public audience with JSMP on these draft laws. Committee A specifically asked JSMP to provide an opinion on the workload of each court actor, as observed during JSMP's court monitoring.

At the public audience, JSMP outlined to Committee A our opinion and analysis of the draft laws, as well as submitted a submission on the draft laws.<sup>13</sup> JSMP outlined in the submission that the flat pay structure is undesirable as it removes any incentive for the court actors to work hard or on complex matters. It is crucial that court actors be incentivised to perform their roles to the highest standard. Within the current draft law, judges will receive the same level of pay as public prosecutors and public defenders.

In JSMP's, opinion this should be amended as judges perform a distinctly different role to that performed by public prosecutors and public defenders. JSMP regard that judges administer justice, while the function of public prosecutors or public defenders is essential to the formal justice system through their

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<sup>8</sup> Ibid. Recommendations 85, 88, 89, 91–93 & 96–97

<sup>9</sup> Ibid. Recommendations 35–36, 45, 52, 56 & 97–119

<sup>10</sup> Ibid. Recommendations 106

<sup>11</sup> Ibid. Recommendation 30

<sup>12</sup> Ibid. Recommendations 1–4, 6–29

<sup>13</sup> JSMP, *Submissaun – Proposta Lei Nú. 42/III (4a) – Alterasaun Dahuluk ba Lei Nú. 10/2009 ne'ebé estabeselese Estatutu Remuneratóriu ba Majistradu Judisiál, Majistradu Ministériu Públiku no Ajente sira Defensoria Pública 2) Projeitu Lei Nú. 10/III (4a) – Rejime Tranzitóriu Rekrutamentu Juís, Prokuradór no Defensór Públiku no Alterasaun Daruak ba Lei Órganika Kámara Konta nian ne'ebé aprova ho Lei Nú. 9/2011 no Altera ho Lei Nú. 3/2013*, (October 2016), available at: [http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu\\_L.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu_L.pdf)

representation of victims and defendants. JSMP outlined this in their audience with Committee A and the submission they submitted. Following their consultation with JSMP, Committee A approved the draft law amending the law on remuneration for court actors and submitted it to plenary for discussion and approval. JSMP urges plenary to give priority to discussing and approving this draft law. As well, JSMP compels Committee A and plenary to discuss and approve the draft law amending the recruitment of court actors.

## 1.2 Resources in the justice sector

### Budget

In 2016, the Timor-Leste justice sector received funds totalling \$27,023,000 which was a decrease from \$35,151,000 allocated in 2015. From these funds, the Ministry of Justice received \$20,233,000, the courts received \$3,848,000, and the Office of the Prosecutor-General received \$2,942,000. Other justice sector institutions received the amount displayed in Table 2 below.

**Table 2: Funding for the justice sector in 2015 and 2016**

	2015 Budget (US\$) <sup>14</sup>	Amended 2015 Budget (US\$)	2016 Budget (US\$)	% Change
Ministry of Justice, including:	\$26,320,000	\$26,278,000	\$20,233,000	-23.13%
Office of the Public Defender	\$ 1,562,000		\$ 1,363,000	-12.74%
Legal Training Centre	\$ 177,000		\$ 194,000	+9.60%
Other *	\$24,539,000	\$24,539,000	\$18,677,000	-24.02%
Courts**, including:	\$ 5,610,000		\$3,848,000	-31.41%
Court of Appeal	\$ 5,020,000		\$3,086,000	-38.53%
District Courts	\$ 553,000		\$ 724,000	+30.92%
Other	\$ 37,000		\$ 38,000	+2.70%
Office of the Prosecutor-General	\$3,221,000		\$2,942,000	-8.66%
<b>TOTAL BUDGET FOR JUSTICE SECTOR:</b>	<b>\$ 35,151,000</b>		<b>\$27,023,000</b>	<b>-23.12%</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 rest of this budget is passed onto the Superior Council of Magistrates

The budget allocated to the justice sector in 2016 decreased by 23.12% from the allocation in 2015, compared with the 20.84% increase between 2014 and 2015. JSMP is concerned by the significant reduction in the justice sector's budget. Of particular concern is the reduction in the budgets for the Office of the Public Defender and the Office of the Prosecutor-General. Both State institutions are foundational to guaranteeing citizens have access to justice, and when their budgets are reduced then it can impact only their day to day functioning, including the number of cases they can take on. JSMP

<sup>14</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector' (April 2016) on page 11 the budget figures for the Ministry of Justice in the column titled 'Budget 2015 (US\$)' were from the Amended 2015 Budget. These figures were incorrect, and the correct amounts for the Ministry of Justice in the 2015 Budget are shown above. it is said that the total number of court actors in 2014 was 293. This figure was incorrect, and the correct number of total court actors in 2014 is 296.

encourages the Government and the National Parliament to consider this when they allocate funding to these institutions in 2017.

In 2016, the budget allocated to the District Courts was increased by 30.92%. JSMP commends the Government and National Parliament on recognising that as the District Court hear the majority of cases and conduct the Mobile Courts, they require a budget that allows them to do this efficiently and effectively. However, JSMP remains concerned that the Court of Appeal, despite its small caseload, continues to be allocated a significantly larger budget in comparison with the District Courts. JSMP questions why the budget allocated to the Court of Appeal is over four times that allocated to the four Districts Courts. It is understood that within the 2016 Court of Appeal budget, there were allowances for many of the day to day operating costs and capital expenditure for all the courts. This is of concern as it means the Court of Appeal exercises a level of control over certain finances for the District Courts.

#### Recommendation

6. The Government and National Parliament should allocate sufficient funds to the Office of the Prosecutor-General and the Office of the Public Defender so to ensure they can fulfil their mandate and provide legal assistance to those in need.

#### Court actors

In 2016, there were 239 court actors. This was a considerable decrease compared with the 298 court actors in 2015 and 296 court actors in 2014. JSMP is concerned by the significant decrease in court actors, specifically a reduction in the number of court clerks and administrative staff. Court clerks and administrative staff play an important role in the day to day functioning of the courts. Without either of these court actors, the courts would not function. In particular, court clerks will arrange and manage the distribution of cases for judges, arrange hearings, and organise the execution of court decisions and orders. JSMP encourages the Government to allocate sufficient funds to enable the courts to hire more court clerks and administrative staff, so the courts can function more effectively.

**Table 3: Number of court actors in 2014 to 2016** <sup>15</sup>

	2014	2015	2016
Judges	40	34	34
Prosecutors	40	32	30
Public Defenders	40	30	30
Court Clerks	113	113	90
Translators	9	12	12
Administrative Staff	54	77	43
<b>Total</b>	<b>296</b>	<b>298</b>	<b>239</b>

It can be seen in Table 3 that the total number of judges, prosecutors and public defenders did not increase in 2016. This is a result of the Legal Training Centre not conducting any training in 2016, due to the ongoing impact of the 2014 Parliamentary and Government Resolutions. It remains unclear when the Legal Training Centre will recommence training. However, even when training is recommenced, it will be a further two years until the first cohort of new judges, prosecutors and public defenders will graduate. Thus, in the foreseeable future there will be a shortfall of judicial actors. Indeed, in 2016 two

<sup>15</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector' (April 2016) on page 13 it is said that the total number of court actors in 2014 was 293. This figure was incorrect, and the correct number of total court actors in 2014 is 296.

prosecutors left the Office of the Prosecutor-General but were not able to be replaced. JSMP is concerned by this and urges the Government to ensure the Legal Training Centre can recommence training immediately.

#### Recommendations

7. Sufficient funds must be allocated to allow the Courts to recruitment more court clerks and administrative staff.
8. The Government must ensure that the Legal Training Centre recommences training immediately and is provided with appropriate resources to train additional legal students in the future.

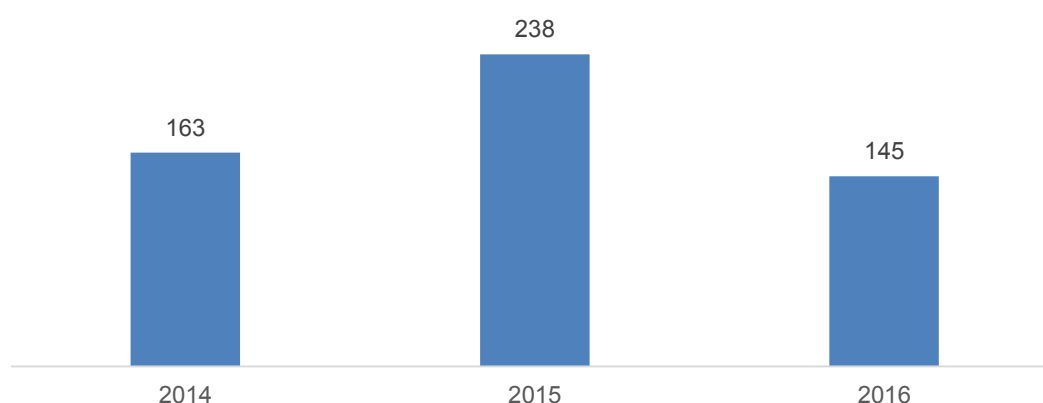
### 1.3 Mobile Courts

The mobile court program commenced in 2010 as a way to bring justice closer to people who reside in rural areas. People in these areas often have limited transport and finances, which makes it difficult for them to travel the long distances to attend one of the four District Courts.

The mobile court program, which is supported by UNDP, continued in 2016. As in previous years, the mobile courts took place in three court jurisdictions, with each jurisdiction conducting mobile courts in three separate Districts. The Dili District Court covered the districts of Ermera, Liquica and Aileu; the Suai District Court covered Bobonaro, Manufahi and Ainaro; and the Baucau District Court covered Lautem, Viqueque and Manatuto. The Oe-Cusse District Court does not have a Mobile Court because it only covers a single District. Unfortunately, the program was temporarily stopped from April to June 2016 due to financial constraints.

In 2016, JSMP monitored 145 mobile court cases. This does not represent all cases heard by the mobile courts in 2016. Due to limitations with resources and other commitments, JSMP was unable to monitor all cases heard by the mobile courts.

**Graph 3: Total number of Mobile Court cases monitored by JSMP in 2014 to 2016**



**Table 4: Total number of Mobile Court cases monitored by JSMP by jurisdiction in 2014 to 2016**

Court	2014	2015	2016
Baucau	63	104	52
Dili	12	23	11
Oe-Cusse	0	0	0
Suai	88	111	82
<b>Total</b>	<b>163</b>	<b>238</b>	<b>145</b>

Table 4 above shows that of the 145 mobile court cases JSMP monitored in 2016, 82 cases (57%) were heard by the Suai District Court. This is representative of the fact that Suai District Court hears a large number of mobile court cases.

In JSMP's opinion, the mobile courts are a good initiative, as it means access to justice for those in the Districts. However, JSMP is concerned that the mobile courts continue to hear a large number of cases in only a few days.<sup>16</sup> For example, between 12 and 16 December 2016, the Suai District Court conducted the mobile court in Bobonaro District and heard 53 cases. A number of these cases involved serious crimes, including a case of sexual abuse of a minor and two rape cases. JSMP believes the courts must give careful consideration to each case and make certain each trial is of the highest quality. Any case before the court that involves a serious crime requires necessary time for the victim, defendant and any witnesses to give evidence, as well as opening and closing remarks. JSMP urges the three District Courts to give appropriate time to each case heard in the mobile courts and so make certain that decisions are of the highest quality.

JSMP is also concerned about the failure of the District Courts to arrange to hear mobile court trials in appropriate locations. In 2016, JSMP observed the District Courts continued to hold mobile courts in unsuitable locations, including sub-District PNTL offices, municipal offices and public prosecutor's offices. These locations are not appropriate, as they do not have the necessary conditions required to hold court cases. For example, as the locations are open to the public, it can be difficult for the mobile court to close the hearing of sensitive cases to the public. JSMP regards mobile courts should be able to be closed to hear sensitive cases where ordinarily the court would hold closed sessions. This is of particular concern as victims of serious crimes are not able to give their evidence in a safe and secure environment. JSMP urges the District Courts to carry out the mobile court proceedings in locations where the public are not able to watch trials. Further, all cases heard by the mobile courts must be conducted carefully and with sensitivity to make certain that they do not undermine the legal interests of the parties involved in the cases.

#### Recommendations

9. The District Courts must give appropriate time to each case heard in the mobile courts.
10. Mobile court cases must be heard by the District Courts in appropriate locations, which allow for proceedings to be closed to the public.

### 1.4 Court of Appeal<sup>17</sup>

In 2016, the Court of Appeal registered 222 new criminal cases. There were also 30 criminal cases<sup>18</sup> and 44 civil cases pending from 2015. From these cases, the Court of Appeal decided 151 criminal cases.

In 2016, the Court of Appeal decided the majority of matters by the examination of proceedings through deliberations alone. The Court of Appeal can also conduct an oral hearing into an appeal, but in 2016 this method was used infrequently.

JSMP is concerned by the lack of oral hearings by the Court of Appeal. By the Court's reliance on deciding proceedings through deliberations, then they are not promoting transparency and it is difficult to hold the Court accountable. Further, many parties have encountered problems in understanding the

<sup>16</sup> JSMP, '*JSMP husu atu julgamentu movel tenke funsiona iha maneria ida-ne'ebé qualidade no kredivel*', (December 2016), available at:

[http://jsmp.tl/wp-content/uploads/2016/01/PrTDSUAIJulgamentuMovelIhaBOBONARO\\_Tetum1.pdf](http://jsmp.tl/wp-content/uploads/2016/01/PrTDSUAIJulgamentuMovelIhaBOBONARO_Tetum1.pdf)

<sup>17</sup> JSMP notes that the Court of Appeal were not able to provide the total civil cases registered at the Court of Appeal in 2016 to JSMP.

<sup>18</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector', (April 2016), page 17, JSMP said that there were 29 criminal pending cases in December 2015. This figure was incorrect, as the Court of Appeal did not include 1 pending case, and the actual total of pending cases as at 31 December 2015 was 30.



Court of Appeal's decision in their cases because they do not have the opportunity to see how it is the Court has come to that decision JSMP believes that were the Court of Appeal to open proceedings then parties and the public would be able to see and understand the Court of Appeal processes and decisions. Further, it is likely that the public will have increased confidence in the court's ability to make fair and reasonable decisions.

#### **Recommendation**

11. The Court of Appeal should conduct more hearings and allow those proceedings to be accessed by court monitoring to ensure they are transparent and open to public scrutiny.

### **1.5 Language**

JSMP observed in 2016 that language continued to be an obstacle in the justice sector. Court proceedings can be conducted in either of the official languages, Tetum or Portuguese.<sup>19</sup> However, interpreters in all District Courts face significant obstacles interpreting Portuguese to Tetum, Tetum to Portuguese and to/from local languages. Based on JSMP observations, interpreters continue to have the most difficulty with translating legal terminology. This is of significant concern, as when interpreters do not properly interpret, there is a direct impact on whether parties understand the proceedings, as well as on the trial process running effectively and fairly. JSMP recommends that training be provided to all court interpreters, which focuses on improving their legal knowledge.

The courts also faced the obstacle of a lack of interpreters for local languages. In 2016, JSMP observed the mobile court in Viqueque District appoint a court official as an interpreter for the defendant, rather than organise to have an official interpreter. While the court is to be commended for looking for ways to assist the defendant to understand the proceedings; it is important that in such circumstances a professional interpreter is available. When the court appoints either a court official or police officer to act as an interpreter for a party, then a conflict of interest may arise.

The courts are required by law to appoint an official interpreter when a party to court proceedings is required to make a statement, but they do not understand the official language in use.<sup>20</sup> JSMP urges the courts to find additional official interpreters to translate to and from local languages in both the permanent and mobile courts.

#### **Recommendations**

12. Training must be provided to all official court interpreters so to increase their legal knowledge and understanding of legal terminology.
13. The courts must find additional official interpreters to translate court proceedings in to and from local languages.

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<sup>19</sup> Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, approved and decreed on 22 March 2002, Article 13

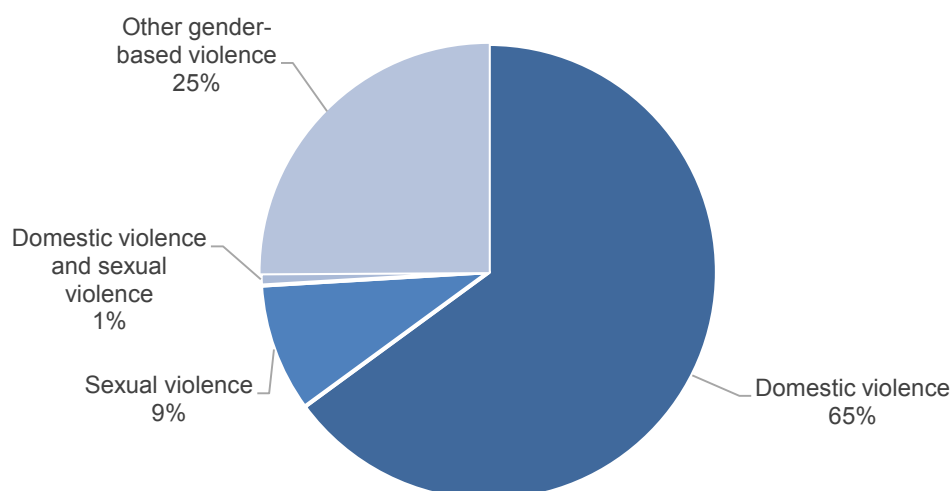
<sup>20</sup> Democratic Republic of Timor-Leste, *Criminal Procedure Code*, Decree-Law No. 13/2005 of 22 November 2005, Article 83.1; Democratic Republic of Timor-Leste, *Civil Procedure Code*, Decree-Law No. 1/2006 of 21 February 2006, Article 104.2

## 2 GENDER EQUALITY

### 2.1 Gender-based violence cases

In 2016, JSMP monitored and analysed 582 cases involving gender-based violence against women and girls. This accounts for 62 per cent of the 941 criminal cases monitored by JSMP in 2016, and illustrates that the number of gender-based violence cases continues to be high throughout all courts, particularly when compared to other types of offences. The below graph shows that 65 per cent of gender-based violence cases were characterised as domestic violence, while 9 per cent involved sexual violence.

**Graph 4: Main gender-based offences against women and girls monitored by JSMP in 2016**



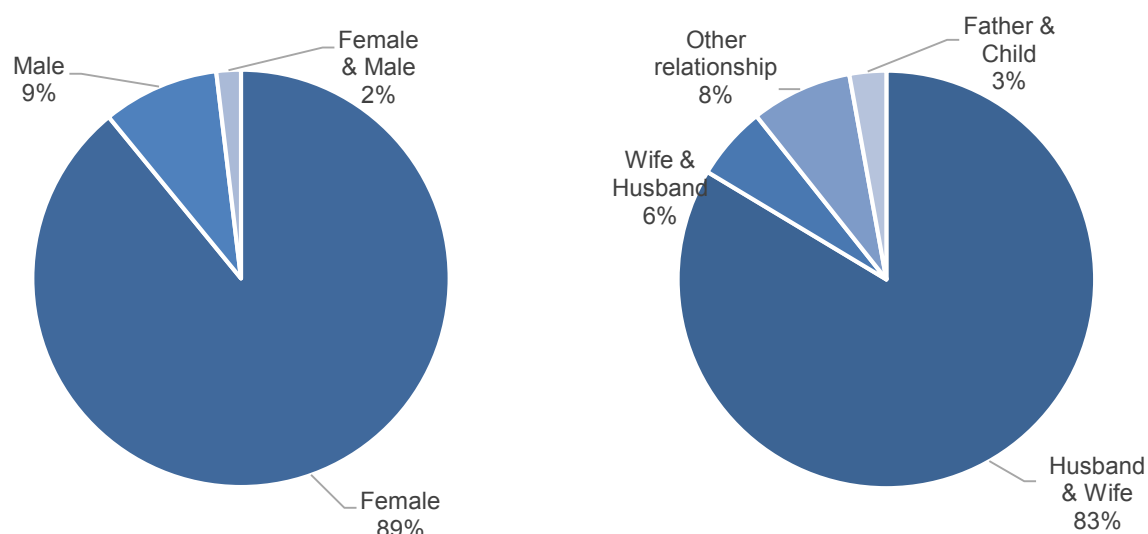
### 2.2 Domestic violence cases

#### Statistics on domestic violence cases

In 2016, JSMP monitored 421 cases of domestic violence. JSMP defines cases of domestic violence as those where the defendant was charged using the Law Against Domestic Violence (LADV).<sup>21</sup> This, however, is likely to under-represent the number of domestic violence cases being processed through the courts as JSMP have noted many cases are not being charged under the LADV in addition to the Penal Code.

Cases characterised as domestic violence can involve either male or female defendants. However, as shown below in Graph 5, the majority of cases monitored by JSMP (89 per cent) involved male defendants. The below graphs also show that in 83 per cent of cases characterised as domestic violence, the defendant and victim were husband and wife, while in only 3 per cent of cases the defendant was the father of the child victim.

<sup>21</sup> Democratic Republic of Timor-Leste, *Law Against Domestic Violence*, Decree Law No. 7/2010 of 7 July 2010.

**Graph 5: Cases characterised as domestic violence by the victim's gender and by the relationship between the defendant and victim****Table 5: Cases characterised as domestic violence monitored by JSMP in 2016**

Case type	Article(s)	Number of cases
Simple offences against physical integrity characterised as domestic violence	Article 145 PC & Article 35 LADV	356
Mistreatment of a spouse characterised as domestic violence	Article 154 PC & Article 35 LADV	46
Aggravated rape characterised as domestic violence	Articles 172 & 173 PC & Article 35 LADV	3
Simple offences against physical integrity characterised as domestic violence & Property damage	Article 145 PC & Article 35 LADV & Article 258 PC	2
Simple offences against physical integrity characterised as domestic violence & Threats	Article 145 PC & Article 35 LADV & Article 157 PC	2
Serious offences against physical integrity characterised as domestic violence	Article 146 PC & Article 35 LADV	2
Mistreatment of a minor characterised as domestic violence	Article 155 PC & Article 35 LADV	2
Mistreatment of a spouse characterised as domestic violence & Failure to fulfil an obligation to provide food assistance	Article 154 PC & Article 35 LADV & Article 225 PC	1
Aggravated sexual abuse of minor with penetration characterised as domestic violence	Articles 177(1) & 182 PC & Article 35 LADV	1
Aggravated homicide characterised as domestic violence & Destruction, theft, hiding or profaning of a corpse	Article 139 PC & Article 35 LADV & Article 224 PC	1
Attempted aggravated homicide characterised as domestic violence	Articles 23 & 139 PC & Article 35 LADV	1
Simple offences against physical integrity characterised as domestic violence & Negligent offences against physical integrity	Article 145 PC & Article 35 LADV & Article 148 PC	1

Case type	Article(s)	Number of cases
Continuous sexual abuse of a minor with penetration characterised as domestic violence	Articles 41 & 177(1) PC & Article 35 LADV	1
Attempted homicide characterised as domestic violence	Articles 23 & 138 PC & Article 35 LADV	1
Simple offences against physical integrity characterised as domestic violence & Threats & Simple offences against physical integrity	Article 145 PC & Article 35 LADV & Article 157 PC & Article 145 PC	1
<b>Total domestic violence cases</b>		<b>421</b>

In 2016, JSMP observed that 324 of the 356 cases of simple offences against physical integrity characterised as domestic violence was committed by a husband or wife against their spouse. JSMP is of the opinion that in cases where domestic violence happens within a marriage or de facto relationship, then the defendant should be charged with mistreatment of a spouse<sup>22</sup> and not simple offences against physical integrity.<sup>23</sup>

Article 154 is the more specific charge in the majority of the 324 cases, as it relates specifically to the mistreatment of a spouse and has a higher penalty range. The penalty range for Article 145 is up to three years' imprisonment or a fine; whereas the penalty range for Article 154 is two to six years' imprisonment, if no heavier penalty is applicable under another provision. Article 154 better reflects the seriousness of violence perpetrated by a defendant against their spouse, and prosecutors should be selecting the article with the greatest maximum penalty.

JSMP also remains concerned that defendants continue to be charged with simple offence against physical integrity under Article 145; despite evidence establishing the defendant caused serious physical injury to the victim. Only 2 cases of domestic violence monitored by JSMP in 2016 were charged as serious offences against physical integrity under Article 146. However, JSMP observed a number of cases in 2016 where the defendant should have been charged under Article 146 because they had the necessary intent to cause serious harm. It is important that, in cases where the defendant has the necessary intent to cause serious harm, the prosecutor charges the defendant with Article 146; thus reflecting the serious nature of the crime.

#### Case Study <sup>24</sup>

On 19 November 2016, at approximately midday, the defendant argued with his wife. The defendant took a piece of firewood and hit the victim twice in her head. This caused the victim to become unconscious and fall to the ground.

When the victim became conscious, she tried to escape. However, the defendant continued beating the victim with the firewood. The victim was struck four times on her back, twice on her shoulders and twice to her knees. The victim suffered injuries and had to be treated at a medical centre.

The prosecutor charged the defendant with committing a simple offence against physical integrity characterised as domestic violence in accordance with Article 145 of the Penal Code and Article 35 of the Law Against Domestic Violence.

The Court found the defendant guilty of the offence and him to 5 months in prison suspended for 1 year.

<sup>22</sup> Democratic Republic of Timor-Leste, *Penal Code*, Decree Law No. 19/2009 of 8 April 2009, Article 154.

<sup>23</sup> Timor-Leste *Penal Code*, Article 145.

<sup>24</sup> Case No. 0010/15.BCQI

The above case study shows the importance of prosecutors considering all the facts of a case and medical evidence of the victim's injuries before charging the defendant. The defendant's use of a piece of wood to repeatedly hit his wife on the head is clearly a case of serious offence against physical integrity. Hitting a person on the head with a heavy instrument has the potential to seriously or permanently wound. In fact, the victim in this case became unconscious. These facts show that the defendant clearly intended to inflict serious harm to the victim. Consequently, the prosecutor should have considered charging the defendant with Article 146 or in the alternative Article 154. This means the minimum applicable sentence the defendant could have received was two years' imprisonment and reflects the serious nature of the crime committed by the defendant.

It is JSMP's belief that a legal guideline for prosecutors should be developed. This legal guideline can set out the distinction between Articles 145, 146 and 154 along with how certain aggravating factors must be taken into account when determining the appropriate charge against the defendant. The guideline should also provide examples of cases where the defendant has been correctly charged and outline general sentencing principles in cases of domestic violence so to ensure consistency in sentencing outcomes.

#### Recommendation

14. The Office of the Prosecutor General should develop a legal guideline that outlines the key elements of Article 145, 146 and 154 of the Penal Code, presents case examples where defendants have been correctly charged, and provides guidance as to sentencing submissions.

#### Trends in sentencing in domestic violence cases

In 2016 JSMP observed defendants receive a suspended sentence in 66 per cent of cases characterised as domestic violence. While in 9 per cent of cases the courts imposed on defendants, who had received a suspended sentence, certain rules of conduct under Article 70 of the Penal Code.

**Table 6: Decisions in cases characterised as domestic violence monitored by JSMP in 2016**

Type of decision	Number	%
Suspended sentence (Article 68 PC)	277	66%
Fine (Article 67 PC)	45	11%
Suspended sentence (Article 68 PC) with rules of conduct (Article 70.1(g))	38	9%
Unknown	17	4%
Prison sentence (Article 66 PC)	15	4%
Admonishment (Article 82 PC)	11	3%
Acquittal	10	2%
Suspended sentence (Article 68 PC) & Civil compensation	2	0.48%
Acquittal & Settlement approved	1	0.24%
Acquittal & Fine (Article 67 PC)	1	0.24%
Prison sentence (Article 66 PC), Suspended sentence (Article 68 PC) & Acquittal <sup>25</sup>	1	0.24%

<sup>25</sup> In this matter there were three defendants. Defendant, FB, received a prison sentence of 19 years. Defendant, ATF, received a prison sentence of 2 years, suspended for 3 years, while the defendant, MdS, was acquitted of the charge against him.



Type of decision	Number	%
Suspended sentence (Article 68 PC) & Settlement approved	1	0.24%
Suspended sentence (Article 68 PC) with rules of conduct (Article 70.1(g)) & Civil compensation	1	0.24%
Prison sentence (Article 66 PC) & Civil compensation	1	0.24%
<b>Total</b>	<b>421</b>	<b>100%</b>

Article 69 and 70 of the Penal Code provides for the court to impose certain conditions and rules of conduct on the defendant for the length of their suspended sentence. When the court imposes compliance by the defendant of certain conditions or rules of conduct, they not only deter the defendant from reoffending, but also can redress the harm caused by the crime and promote the rehabilitation of the defendant.<sup>26</sup>

The conditions or rules of conduct that can be imposed on a defendant are diverse in nature. Though, JSMP has only monitored the application of Article 70.1(g) as an additional condition to a suspended sentence. Article 70.1(g) requires a defendant to periodically present themselves to either their nearest court or police station.<sup>27</sup> JSMP commends the court for this positive progress in the sentencing of perpetrators of domestic violence.

However, JSMP remains concerned that there are still no proper mechanisms in place to ensure the consistent enforcement of any condition or rule of conduct placed on the defendant. JSMP has observed that when the defendant does not comply, then the length of the defendant's suspended sentence is generally only increased and the reporting requirement remains in place. Thus, the defendant does not face any real repercussions for their non-compliance of the rule of conduct imposed by the court.

#### Case Study <sup>28</sup>

In 2013, the defendant was found guilty of simple offence against physical integrity against his wife. The Oe-Cusse District Court sentenced the defendant to 6 months in prison, suspended for 2 years.

A requirement of the defendant's suspension was compliance with the rule of conduct under Article 70.1(g). Specifically, the defendant had to report, for the duration of his suspension, to police four times a month on a Friday.

The defendant failed to comply with the rule. He reported to the police just 7 times during the 2-year suspension.

Because of the defendant's non-compliance, the matter was brought back before the Court in May 2016.

The Oe-Cusse District Court found that the defendant had failed to comply with the rule of conduct attached to his suspended sentence. Consequently, the Court revoked the defendant's current suspended sentence in accordance with Article 73.1; and issued a new suspended sentence for the defendant to comply with for 1 year and 6 months. The Court again ordered that the defendant report to the police at 8am, every Friday, for the duration of the suspension.

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

JSMP believes the decision in this case study is positive and shows that the Court will address non-compliance by a defendant. However, JSMP is concerned that there was such a lengthy delay from

<sup>26</sup> Timor-Leste, *Penal Code*, Articles 69 & 70

<sup>27</sup> Timor-Leste, *Penal Code*, Articles 70.1(g)

<sup>28</sup> Case No. 0037/12.DIDIL

when the defendant first failed to comply, to when the Court was notified of his non-compliance. Pursuant to Article 191.3 of the Criminal Procedure Code, when a defendant, without reason, fails to comply with the reporting requirement imposed on them for five consecutive days, then their non-compliance is to be reported to the court.<sup>29</sup> In this case study, the Court should have been notified when the defendant first failed to comply with the reporting rule for five consecutive days.

This case shows that when there is no effective monitoring, and no adverse consequences for non-compliance, there is little motivation for defendants to comply with the court's decision. In addition, defendants are neither deterred nor restricted from committing another crime in the future. Victims may also feel that they have not received justice because the defendant has not been appropriately punished.

JSMP encourages the courts to develop and implement a system that ensures the effective monitoring of defendants and their compliance with the certain conditions or rules of conduct imposed on them for the duration of their suspended sentence. In circumstances where the defendant fails to comply, then the court must either amend or revoke the suspended sentence, and impose a harsher penalty to deter the defendant and promote their compliance.<sup>30</sup>

#### Recommendations

15. A monitoring system must be developed and implemented to ensure defendants comply with the certain conditions or rules of conduct imposed on them for the duration of their sentence.
16. When a defendant fails to comply with the conditions or rules of conduct imposed on them, then the court must amend or revoke the defendant's suspended sentence in accordance with Articles 72 and 73 of the Penal Code.

### 2.3 Sexual violence cases

Sexual violence remains a critical issue for women and girls in Timor-Leste; and so in March 2016 JSMP published a thematic report entitled *Charging, trials and sentencing in cases of sexual violence in Timor-Leste 2012–2015*.<sup>31</sup> This report explains the circumstances of women and children who are directly affected and victimised by sexual violence.

The report was compiled from JSMP's monitoring of the charging, trial and sentencing in 271 sexual violence cases from 2102 to 2015. JSMP found from the monitoring that while progress had been made in the handling of sexual violence cases, there are still many cases that continue to be handled inadequately. JSMP observed errors with the charging of perpetrators, as well as sentencing being inconsistent and often not proportionate with the gravity of the crime committed. Based on the findings of the report, JSMP made a number of recommendations to improve the charging and sentencing in cases of sexual violence along with the treatment of victims during the trial process.

#### Statistics on sexual violence cases

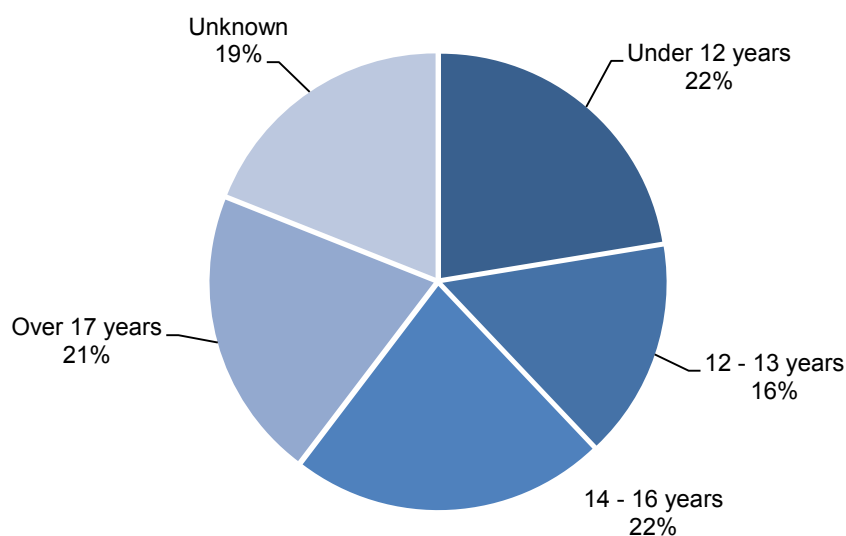
JSMP monitored 58 cases of sexual violence in 2016. This accounts for 10 per cent of the 582 cases of violence against women and girls, and 6 per cent of all 941 criminal cases monitored by JSMP in 2016. In 60 per cent of sexual violence cases, the victim was under 17 years old. The victim was a minor (under 14 years old) in 38 per cent of cases, and an adolescent (between 14 and 16 years old) in 22 per cent of cases monitored.

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<sup>29</sup> Timor-Leste, *Criminal Procedure Code*, Article 191.3.

<sup>30</sup> Timor-Leste *Penal Code*, Articles 72 & 73.

<sup>31</sup> JSMP, *Charging, trials and sentencing in case of sexual violence in Timor-Leste 2012–2015* (March 2016), available at: [http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL\\_ENGLISH-VERSION-PDF.pdf](http://jsmp.tl/wp-content/uploads/2012/05/sexual-violence-report-FINAL_ENGLISH-VERSION-PDF.pdf)

**Graph 6: Cases involving sexual violence monitored by JSMP in 2016 by age of victim****Table 7: Cases involving sexual violence monitored by JSMP in 2016**

Case type	Article(s)	Number of cases
Sexual abuse of a minor with penetration	Article 177(1) PC	9
Rape	Article 172 PC	8
Aggravated sexual abuse of a minor with penetration	Articles 177(1) & 182 PC	6
Sexual acts with an adolescent	Article 178 PC	4
Sexual exhibitionism	Article 181 PC	3
Sexual abuse of a minor with other sexual act	Article 177(2) PC	3
Aggravated sexual abuse of a minor with other sexual act	Articles 177(2) & 182 PC	3
Attempted rape	Articles 23 & 172 PC	3
Aggravated rape characterised as domestic violence	Articles 172 & 173 PC & Article 35 LADV	3
Sexual exploitation of a third party	Article 174 PC	2
Aggravated rape	Articles 172 & 173 PC	2
Sexual coercion	Article 171 PC	1
Attempted sexual acts with an adolescent	Articles 23 & 178 PC	1
Aggravated sexual abuse of a minor with penetration characterised as domestic violence	Articles 177(1) & 182 PC & Article 35 LADV	1
Attempted sexual coercion	Articles 23 & 171 PC	1
Sexual exploitation of a third party & Child prostitution	Articles 174 & 175 PC	1
Aggravated sexual abuse of a minor with other sexual act in joinder	Articles 177(2), 182 & 35 PC	1
Attempted aggravated sexual abuse of a minor with penetration	Articles 23, 177(1) & 182 PC	1
Sexual abuse of a person incapable of resistance	Article 179 PC	1

Case type	Article(s)	Number of cases
Continuous sexual abuse of a minor with penetration characterised as domestic violence	Articles 41 & 177(1) PC & Article 35 LADV	1
Abduction & Rape	Articles 161 & 172 PC	1
Rape & Unlawful entry	Articles 172 & 185 PC	1
Rape	Article 285 KUHP	1
<b>Total sexual violence cases</b>		<b>58</b>

### Trends in sentencing in cases involving sexual violence

In 2016, important progress was made in relation to sentencing in crimes involving sexual violence. In 53.45 per cent of cases, the perpetrator of sexual violence was sentenced to prison, compared to prison sentences in 30.39 per cent of cases in 2015 and 16 per cent in 2014.

JSMP commends the courts for sentencing perpetrators of sexual violence to prison in an increased number of cases. However, JSMP remains concerned that there continues to be inconsistency in prison sentences for sexual violence. Also, sentences are often not proportionate to the relevant offence, and the lengths of prison sentences can be vastly different between cases of similar facts.

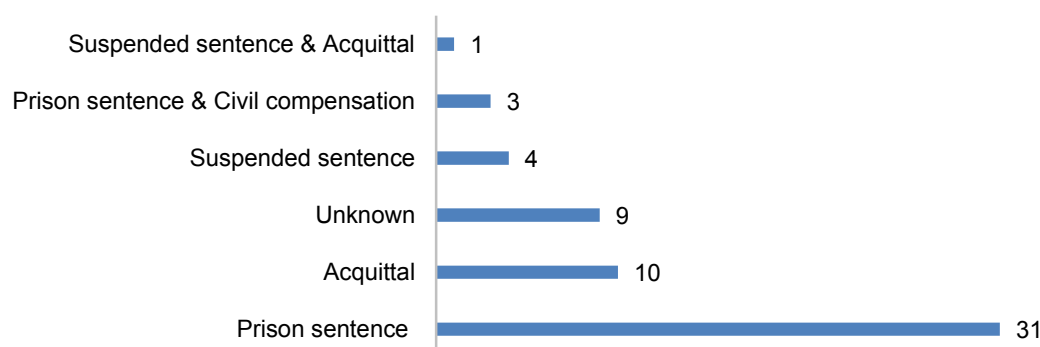
For example, in one case of aggravated sexual abuse of a minor, the perpetrator was sentenced to 6 years and 8 months in prison. While in another case of aggravated sexual abuse of a minor, the perpetrator was sentenced to 12 years in prison. There are significant similarities between these cases, which should mean the prison sentences for the two perpetrators should be similar in length. In particular, the victim in each case was 4 years old, the perpetrator was unknown to the victim; and in each case the perpetrator penetrated the victim once.

JSMP believes the introduction of a sentencing guideline for sexual violence cases would assist the courts to hand down consistent sentences and ensure that perpetrators receive sentences that are proportionate to the offence they committed.

**Table 8: Decisions in cases involving sexual violence monitored by JSMP in 2016**

Type of decision	Number	%
Prison sentence (Article 66 PC)	31	53%
Acquittal	10	17%
Unknown	9	16%
Suspended sentence (Article 68 PC)	4	7%
Prison sentence (Article 66 PC) & Civil compensation	3	5%
Suspended sentence (Article 68 PC) & Acquittal	1	2%
<b>Total</b>	<b>58</b>	<b>100%</b>

**Graph 7: Sentencing trends in cases involving sexual violence monitored by JSMP in 2016**



#### Recommendation

17. A sentencing guideline should be developed to ensure consistency in sentencing of sexual violence cases. This guideline should outline general sentencing principles for sexual violence cases, aggravating and mitigating factors using examples, rules for repeat offenders, guidance on alternative penalties and provide for the calculation of civil compensation.

## 2.4 Implementation of recommendations from the Committee on the Elimination of Discrimination Against Women

Timor-Leste became a party to the Convention on the Elimination of Discrimination Against Women (CEDAW) without reservation in 2003. CEDAW requires State Parties to take immediate action to eliminate all aspects of discrimination against women. To comply with the convention, Timor-Leste must adopt and apply the principles of CEDAW in national legislation, policies and development plans.

Every four years, State Parties must submit a report to the CEDAW Committee outlining those measures that have been taken to implement the convention, as well as any challenges encountered. In November 2015, Timor-Leste's second and third reports were considered by the CEDAW Committee. The Government of Timor-Leste and key civil society organisations gave oral and written submissions to the Committee on the progress made with implementing CEDAW.

On 20 November 2015, the CEDAW Committee released its concluding observations and recommendations, including on women and the justice sector. In particular, observations were made in regard the prevalence of gender-based violence in Timor-Leste and the ongoing obstacles for women to access justice.

In 2016, a number of important steps were taken by the State to implement CEDAW and respond to the Committee's 2015 recommendations. In particular, JSMP observed an increase in the consideration and application of CEDAW by judges and other court actors in cases of gender-based violence.<sup>32</sup> Additionally, certain court actors were gender-sensitive and did not make discriminatory comments or decisions against women. The courts also set about processing a large proportion of pending gender-based violence cases from previous years and ensuring that cases of gender-based violence are processed in a timely manner.

The CEDAW Committee recommended that Timor-Leste accelerate the adoption of certain laws that directly impact on the enjoyment of women's rights along with the National Action Plan on Gender-

<sup>32</sup> JSMP, 'Tribunál kontinua aplika instrumentu CEDAW ba krime ho natureza violénsia doméstika' (18 February 2016), available at: [http://jsmp.tl/wp-content/uploads/2016/01/PrWCJUdesizaun-kazu-VD-referebaCEDAW\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2016/01/PrWCJUdesizaun-kazu-VD-referebaCEDAW_TETUM.pdf)

Based Violence for 2015 to 2019. In 2016, the National Parliament approved the Law on the Prevention and Combatting of Human Trafficking, along with discussing the Law on Definition of Ownership of Real Estate. While, after consultation and input by civil society, the Government approved the National Action Plan on Gender-Based Violence for 2015 to 2019.

JSMP commends the State on taking these significant steps to improve and promote women's equality in Timor-Leste. However, in JSMP's opinion significant work still needs to be done to ensure the proper implementation of the CEDAW Committee's recommendations. JSMP urges the State to consider and implement those recommendations made by the Committee related directly to improving access to justice for women.

Access to justice for women is often restricted due economic or language barriers. Currently in Timor-Leste, the only legal aid service provided is either through the Public Defender's Office or a small number of civil society organisations who are largely dependent on donor funding. Because of a lack of understanding of the legal system, many women are hesitant to access the legal aid currently offered. Alternatively, those women who reside in rural areas are simply not able to access any form of legal aid due to severe constraints on the delivery of legal services.

The current lack of a proper legal aid system in Timor-Leste means that a large percentage of women are neither able to access free and independent legal advice nor have an awareness of their legal rights. In their 2015 observations, the CEDAW Committee recommended Timor-Leste 'establish an effective system of legal aid to eliminate the economic barriers faced by women in gaining access to justice'.<sup>33</sup> The Committee also recommended that the State allocate extra resources to enhancing the infrastructure, quality and accessibility of the formal justice system especially in rural areas.<sup>34</sup> JSMP believes that the implementation of these recommendations by the State is foundational to ensuring that all women can access justice regardless of the barriers they face. JSMP urges the State to prioritise the establishment of an effective and efficient legal aid system and the allocation of extra resources to improving the formal justice system. Further, the State must ensure there is funding for independent legal aid organisations helping women, such as ALFeLa.

#### Recommendations

18. The State should take immediate steps to implement the CEDAW Committee's recommendations, especially in relation to
  - a. Establishing an effective legal aid system which eliminates the economic barriers faced by women in gaining access to justice
  - b. Allocating extra resources to enhance the infrastructure, quality and accessibility of the formal justice system, particularly in rural areas.
19. The State must ensure there is State funding for independent legal aid organisations helping women.

<sup>33</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Timor-Leste*, 20 November 2015, CEDAW/C/TLS/CO/2-3, Recommendation 11(b), available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqWC9Lj7ub%2fHrJVf1GxZMHFGfKgXub5hx6nqtRTaOEyaQMqwVgMgpsx9pAyzwykoCKyJho88qL%2fWjs2TCP9Hv8XF01fYXd%2bzCh1xJp3jVFexW5OQxkAM3RTvmbBSm5pGw%3d%3d>

<sup>34</sup> Ibid. Recommendation 11(d)



### 3 CHILDREN IN THE JUSTICE SYSTEM

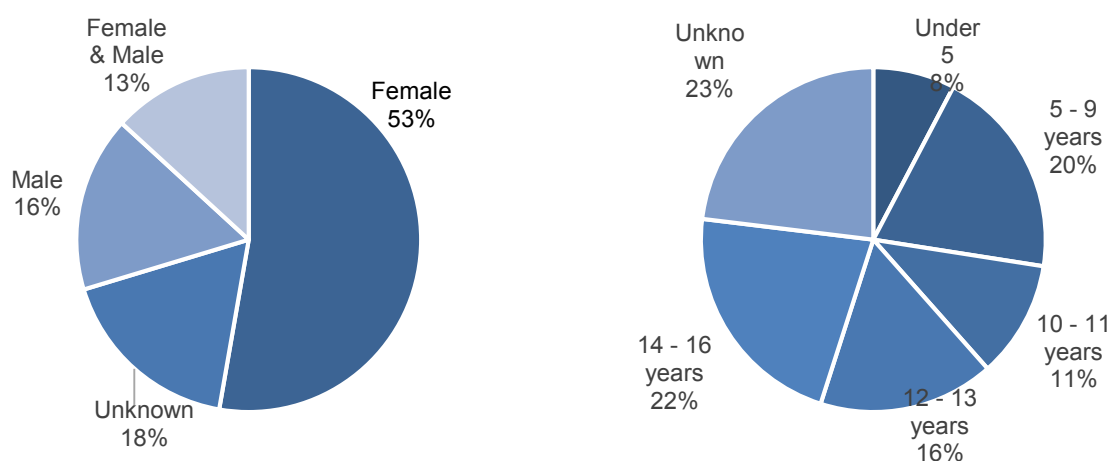
#### 3.1 Cases involving children

In 2016 JSMP monitored 82 cases involving child victims, representing 9 per cent of all criminal cases monitored by JSMP. This shows that violence against children continues to be prevalent in Timor-Leste.

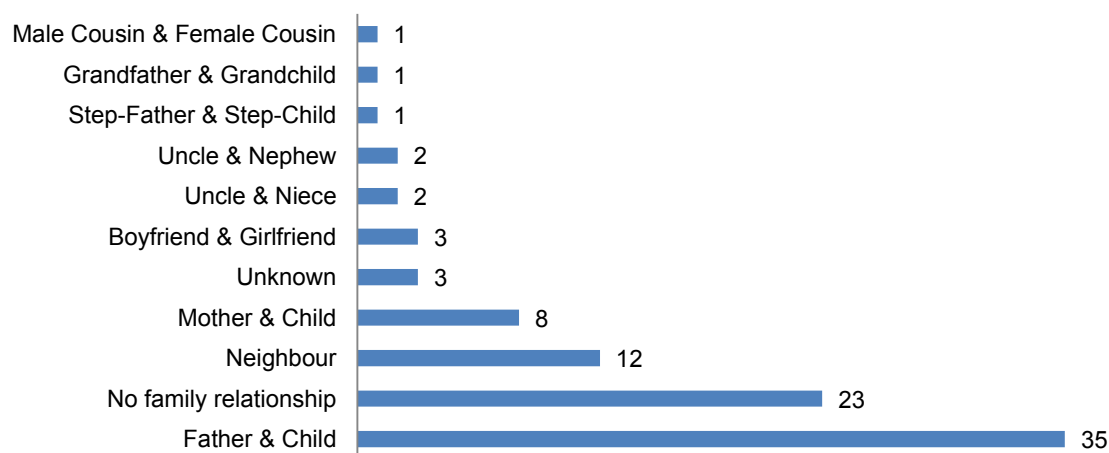
Crimes against children can involve physical, emotional or sexual abuse or neglect. However, the majority of cases reaching the courts involve sexual violence. In 2016, approximately 40 per cent of cases involving child victims were sexual violence cases. Most criminal cases concerning children involved female victims (53%). Sixteen per cent of cases involved male victims, and 13 per cent involved both female and male victims.

In 22 per cent of criminal cases involving violence against children, the victim was aged 14 to 16 years, with 20 per cent of child victims aged between 5 to 9 years, and 16 per cent aged 12 to 13 years. The perpetrator was a family member of the child victim in 55 per cent of total criminal cases involving children. In the majority of cases, the defendant was the victim's father (39%). Only in 25 per cent of cases was there no family relationship between the defendant and child victim, and in 13 per cent of cases the perpetrator was the victim's neighbour.

**Graph 8: Criminal cases involving child victims monitored by JSMP in 2016 by gender and age of victim**



**Graph 9: Criminal cases involving child victims monitored by JSMP in 2016 by the relationship between victim and defendant**



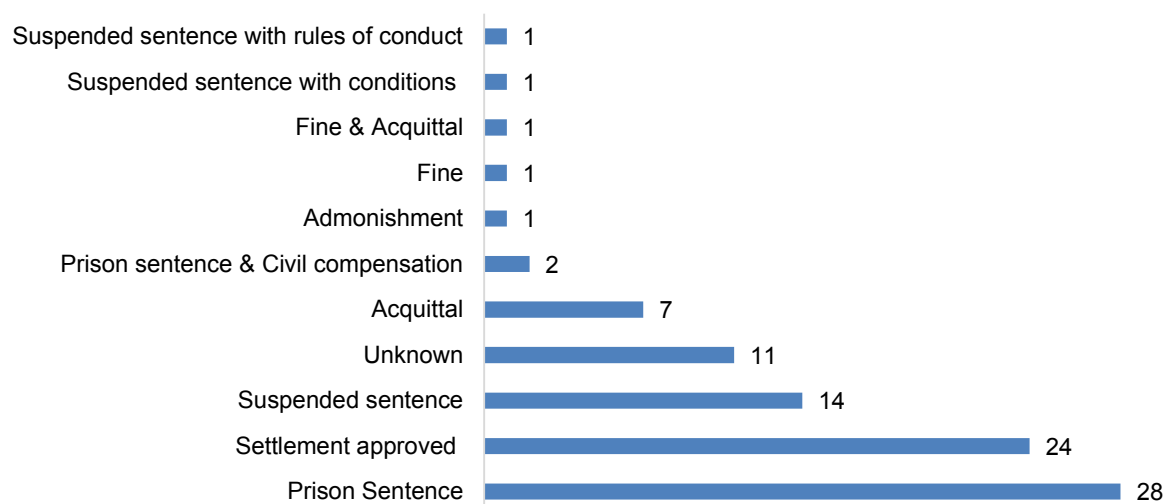
**Table 9: Cases involving children (aged 0 – 16) monitored by JSMP in 2016**

Case type	Article(s)	Number of cases
Failure to fulfil an obligation to provide food assistance	Article 225 PC	20
Simple offences against physical integrity characterised as domestic violence	Article 145 PC & Article 35 LADV	12
Sexual abuse of a minor with penetration	Article 177(1) PC	9
Simple offences against physical integrity	Article 145 PC	8
Aggravated sexual abuse of a minor with penetration	Articles 177(1) & 182 PC	6
Sexual acts with an adolescent	Article 178 PC	4
Sexual abuse of a minor with other sexual act	Article 177(2) PC	3
Aggravated sexual abuse of a minor with other sexual act	Articles 177(2) & 182 PC	3
Need to regulate exercise of parental authority	Article 1787 CC	3
Aggravated rape characterised as domestic violence	Articles 172 & 173 PC & Article 35 LADV	3
Rape	Article 172 PC	2
Mistreatment of a minor characterised as domestic violence	Article 155 PC & Article 35 LADV	2
Adoption	Article 1853 CC	2
Duty to assist	Article 1563 CC	2
Negligent homicide (Manslaughter)	Article 140 PC	1
Negligent offences against physical integrity	Article 148 PC	1
Attempted sexual acts with adolescent	Article 23 & 178 PC	1
Sexual exhibitionism	Article 181 PC	1
Aggravated rape	Articles 172 & 173 PC	1
Infanticide	Article 142 PC	1
Aggravated sexual abuse of a minor with penetration characterised as domestic violence	Articles 177(1) & 182 PC & Article 35 LADV	1
Aggravated sexual abuse of a minor with other sexual act in joinder	Article 177(2), 182 & 35 PC	1
Attempted aggravated sexual abuse of a minor with penetration	Articles 23, 177(1) & 182 PC	1
Continuous sexual abuse of a minor with penetration characterised as domestic violence	Articles 41 & 177(1) PC & Article 35 LADV	1
Succession	Article 1895 & 1998 CC & Article 846, 790 & 22 CPC	1
Duty to contribute to the responsibility of family life & Need to regulate the exercise of parental authority	Articles 1564 & 1787 CC	1
<b>Total cases involving children</b>		<b>91</b>

### 3.2 Sentencing trends in cases involving children

In 2016, JSMP monitoring established that the courts achieved a high level of progress in the sentencing of perpetrators of violence against children. This progress is evident by the fact that in 31 per cent of cases, the perpetrator received a prison sentence.

**Graph 10: Sentencing trends in criminal cases involving children monitored by JSMP in 2016**



However, JSMP believes that much work still needs to be done by the justice sector to ensure that the courts when sentencing perpetrators are protecting children. In particular, JSMP is concerned that in many cases, the prison sentence received by the perpetrator does not reflect the gravity and circumstances of the case.

#### Case Study <sup>35</sup>

On 3 May 2015, at approximately 2pm, the defendant invited the 4-year-old victim, who was playing in her aunt's house to go and pick guava. The victim agreed and went with the defendant to the river.

When they arrived in the middle of the river the defendant asked the victim to have sexual intercourse with him. Despite her refusal the defendant forced the victim to remove her clothing. He then put his finger in the victim's vagina, grabbed the victim and rubbed his genitals on the victim's genitals. After this the defendant ordered the victim to clean her body (bathe) in the river.

The victim suffered injuries to her genitals and had to receive medical treatment.

The prosecutor charged the defendant with committing aggravated sexual abuse against a minor with penetration in accordance with Article 177.1 and Article 182.1(a) of the Penal Code.

The Court found the defendant guilty of the offence and sentenced him to 6 years 8 months in prison.

In this case, the court sentenced the defendant to the minimum penalty for the crime committed. This sentence does not reflect the vulnerability of the victim as a child, the physical and psychological trauma suffered by the victim, and is not proportionate to the defendant's actions against the victim.

The State has an obligation to protect children.<sup>36</sup> This includes through the application of appropriate penalties to perpetrators of violence against children. Appropriate sentences must protect children by

<sup>35</sup> Case No. 0054/15.LILIQ

<sup>36</sup> Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, approved and decreed on 22 March 2002, Article 18.

detering offenders, signalling to the community that violence against children is unacceptable, as well as provide redress for the particular harm suffered by the victim.

JSMP urges the Courts to hand down appropriate sentences in all cases of violence against children.

#### **Recommendation**

20. In cases of violence against children, the Court must impose sentences that protect children from violence and reflects the severity of the crime committed, as well as the psychological and physical trauma suffered by the victim.

### **3.3 Children and the trial process**

The court and judicial actors have an obligation to ensure that in cases involving children, whether as victims, witnesses or as a party, the best interests of the child are of primary consideration.<sup>37</sup> JSMP believes that enhancing access to justice for children and ending violence against children is fundamental to ensuring Timor-Leste's future development and stability. On this basis, JSMP continued throughout 2016 to advocate for the protection and promotion of children's rights in Timor-Leste.

#### **Incest cases**

The act of incest is a particularly sinister form of sexual violence because it violates the victim's trust of the perpetrator, and takes advantage of the relationship of dependence. Therefore, incest is both sexual violence, as well as an abuse of trust and position. Additionally, victims of incest may suffer serious physical, psychological and emotional harm along with being stigmatised by their family and community.

There is still no specific provision criminalising incest in Timor-Leste. Existing laws, which allow for the prosecution of acts of incest as sexual abuse of a minor or rape, are inadequate. The current law only makes an act of incest punishable where the victim is less than 14 years of age, or it can be proven that actual force or serious threats were used.

Cases of incest continue to be a problem in Timor-Leste, with JSMP monitoring 5 cases in 2016.<sup>38</sup> JSMP also monitored another 3 cases of sexual violence against children where as a result of force and abuse of familial authority there were sexual relations by other familial relations with child victims.<sup>39</sup> JSMP observed in all 8 cases, the court imposed lengthy prison sentences on the perpetrators. In one case, the perpetrator who sexually abused his daughter was given a prison sentence of eighteen years.

JSMP commends the court on making progress in 2016 with the implementation of lengthier prison sentences for perpetrators of incest. However, it remains of great concern to JSMP that the public prosecutors and courts continue to have problems with the charging and sentencing of perpetrators of incest.

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<sup>37</sup> UN General Assembly, *Convention on the Rights of the Child*, Article 3, adopted by the General Assembly resolution 44/25 of 20 November 1989 available at: <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>; Democratic Republic of Timor-Leste, *Ratification of the Convention on the Rights of the Child*, Resolution of National Parliament No. 16/2003 of 16 April 2003.

<sup>38</sup> The crime of incest is defined as sexual relations that take place between an offender and his or her child or parent, grandchild or grandparent, brother or sister, or half brother or sister.

<sup>39</sup> Other familial relations include sexual relations between the offender and his or her niece and nephew or between the offender and an unrelated child to whom the child is like a parent.

#### Case study <sup>40</sup>

The defendant is the stepfather of the victim, who was 13 years old when she was first raped.

The victim was raped a number of times from 2002 to 2010 by the defendant. Each time, the defendant would threaten the victim not to tell anyone and then forced the victim to have sexual intercourse. As a result, the victim gave birth to three children.

The prosecutor charged the defendant with rape in accordance with Article 172 of the Penal Code.

At trial, the prosecutor requested that the court amend the charge against the defendant to continuous sexual abuse of a minor in accordance with Article 41 and 177.1 of the Penal Code, as the victim was a minor at the time of the first rape and the defendant raped the victim multiple times.

The prosecutor asked the court to sentence the defendant to 10 years in prison. The public defender requested that the court consider all the facts and thereafter impose a fair and adequate penalty against the defendant.

After hearing all evidence, the court modified the charge against the defendant to continuous sexual abuse of a minor involving domestic violence.<sup>41</sup>

The court sentenced the defendant to 12 years in prison and ordered him to pay \$5000 in civil compensation to the victim and court costs of \$50.

This case is concerning for a number of reasons. First, the prosecutor charged the defendant with the incorrect article. Thereafter, when asking the court to amend the charge, the prosecutor failed to identify the aggravating factors in this case and request that the sentence was towards the maximum end of the relevant sentence. Instead, the prosecutor asked the court to impose a significantly low prison sentence that did not in any way correlate with the severity of the crime committed.

Aggravating circumstances increase the seriousness of the offence or the offender's culpability, within the sentencing range for the crime committed. In this case, there are a number of aggravating factors present. The victim being in a situation of hierarchical and economical dependence on the perpetrator is an aggravating factor in accordance with Article 182.1(d). Further, the presence of general aggravating circumstances, namely the defendant committing the crime by abuse of power and authority over the victim<sup>42</sup> and victim being vulnerable by reason of her age, increases the need for an appropriate sentence that addresses the crime committed.

The court's act of increasing the length of prison sentence from 10 (as requested by the prosecutor) to 12 years is a positive step. However, it is alarming that by the prosecutor and court failed to identify the aggravating factors in this case. If the perpetrator had been charged with aggravated sexual abuse of a minor, then the applicable sentence range would have been a minimum of 6 years and 8 months, to a maximum of 26 years and 6 months. The fact that the court did not take into account the aggravating factors meant that the perpetrator received a more lenient sentence.

JSMP urges prosecutors and the courts to identify and apply appropriate aggravating articles to the charge against defendants, including specific aggravating circumstances pursuant to Articles 173 and 182 of the Penal Code, and general aggravating factors pursuant to Article 52 of the Penal Code. Moreover, if more than one aggravating factor is present in a case, then the courts should apply a sentence towards the maximum end of the relevant sentencing range.

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<sup>40</sup> Case No. 340/pen/2015/TDS

<sup>41</sup> Timor-Leste, *Penal Code*, Articles 41 & 177.1; Timor-Leste, *Law Against Domestic Violence*, Article 35

<sup>42</sup> Timor-Leste, *Penal Code*, Articles 52.2(c) & 52.2(m)

## Dispute resolution mechanisms in cases involving children

Monitoring from JSMP shows that it remains common for cases brought before the court to have already gone through some form of community or court ordered conciliation. In 2016, JSMP monitored 5 cases of violence against children where the court approved the settlement agreement made between the defendant and the child's parent or guardian. JSMP also monitored another 4 cases of violence against children where the court ordered the parties to attempt conciliation pursuant to Article 262 of the Criminal Procedure Code.

JSMP is very concerned that in many of these cases, the defendant admitted to the court that they had committed violence against the child victim. Yet, the court did not seek to protect the child victim by sentencing the defendant to a penalty that correlates to the crime they committed. Of further concern are the actions of the public prosecutors, who not only consent to the court order for the parties to attempt conciliation; but then present to the court the agreement between the parties and ask the court to both accept the agreement and acquit the defendant of the crime. JSMP believes that such acts from the courts and public prosecutors are not in the best interests of the child victim.

### Case Study <sup>43</sup>

On 8 February 2016, at approximately 10am, the defendant grabbed a piece of firewood and ground it into the 8-year-old victim's chest. The defendant then used two branches to beat the victim on his back and squeezed the victim's neck.

The victim suffered injury to his chest, swelling to his back and bruising on his neck.

The defendant confessed his actions were because he didn't want the victim to fight with the defendant's child.

The prosecutor charged the defendant with committing simple offences against physical integrity in accordance with article 145 of the Penal Code.

When the matter came before the court, the parties were ordered to attempt conciliation in accordance with article 262 of the Criminal Procedure Code.

At the conciliation, the victim expressed that he wanted to cease the complaint, because the defendant had asked for forgiveness and they were now at peace with one another.

The prosecutor and defence lawyer both noted to the court that they agreed with the agreement between the parties, and asked the court to approve settlement of the matter.

Based on the parties' agreement and the victim's request to stop the complaint, the court concluded the case by approving the agreement and ceasing the complaint.

In this case, the prosecutor and the court failed to protect the child victim. The court order to conciliate and subsequent acceptance of the parties' settlement agreement was inappropriate given the victim is a child, the severity of the violence committed by the defendant, and the injuries suffered by the victim.

Additionally, the court's acceptance of the victim's request to cease the complaint and agree to the settlement agreement shows a serious failure in understanding child development. An 8-year-old child does not have the cognitive capacity to know what is best for them, or be fully aware of the impact of the decision they are making.

In JSMP's opinion, this case demonstrates why any case involving violence against children should not be resolved through dispute resolution mechanisms, whether it occur in the community, or be ordered by the court. A child of any age is vulnerable and should be protected by the courts and public prosecutor. Acceptance by the courts and public prosecutors of agreements reached by the defendant

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<sup>43</sup> Case No. 0021/16.OESIC



and the child victim, or victim's parent or guardian, results in children's rights being violated. The courts and public prosecutors must comply with Article 18 of the Constitution by seeking to protect all children

### **3.4 Laws and policies on child justice**

Under the Convention on the Rights of the Child (CRC), States must incorporate the full range of human rights for children into national legislation. In addition, States must guarantee access to justice for children, so that a child can challenge a rights violation and get an effective remedy.

In 2003, Timor-Leste ratified the CRC and two of its three optional protocols. Except for the general provision in Article 18 of the Constitution on the protection of children, Timor-Leste has not yet incorporated the principles from the CRC into national law. In 2016, some progress was made towards rectifying this situation, through the drafting of a law on child protection and the development of a national action plan on children.

#### **Draft law on child protection**

On 18 October 2016, a draft law on child protection was considered by the Council of Ministers, after being presented by the Ministry of Social Solidarity. This draft law is intended to promote children's rights, prevent threats to their welfare, and ensures the protection of children at risk and in danger in order to support their wellbeing and complete development.

JSMP commends the Ministry of Social Solidarity on developing this draft law but is concerned that there was minimal consultation with key civil society organisations in child protection. To date, the draft law has not been translated from Portuguese to Tetum or English. A law on child protection is an important step by the State towards fulfilling the rights of the child in Timor-Leste. JSMP hopes that there is meaningful consultation to ensure that a strong law is passed.

#### **Draft National Action Plan for the Child 2016–2020**

The draft National Action Plan (NAP) for the Child is a four-year plan by the State on how to address and improve the life and rights of the child. There are four key priority areas within the draft NAP: protection of children, health and nutrition, primary and pre-secondary education of children and the participation of children and youth. The NAP aims to guide key entities in the preparation of policies and programmes directed to children, in accordance with priorities established for the promotion of children's rights in Timor-Leste.

The development of the draft NAP was led by the Commission for the Rights of the Child, with technical support by UNICEF. Prior to drafting, the Commission held a three-day workshop in March 2016 which brought together key Government Ministries and civil society organisations. During the workshop, discussions were held on what progress had been made with implementing the recommendations from the Committee on the Rights of the Child concluding observations. Participants were also consulted by the Commission as to what areas they believed should be of priority in the NAP. The Commission also held consultation workshops in three districts, Bobonaro, Oe-Cusse and Lautém. Participants of these workshops included key Government Ministries, civil society organisations as well as several parents and children.

The draft NAP sets out an integrated response by the State to respect, protect and fulfil the rights of the child. The aim of the NAP is to ensure that all children in Timor-Leste can attend school, have healthy lives, are provided with nutritious food, feel safe and protected, and can express their feelings and opinions without fear. An important area of concern in the NAP is the need to guarantee the rights of children who either live in difficult circumstances or isolated areas. Justice for children is a key focus of the NAP. Outlined are those actions which must be taken to ensure the protection and support of child victims as well as the reduction of violence against children.

JSMP commends the Commission on the draft NAP, and requests the Government prioritises adoption and implementation of the draft NAP in 2017.

**Recommendation**

21. JSMP encourages the translation of the draft law on child protection into Tetum and English, followed by open consultation so to ensure the draft law is fully compliant with the Convention on the Rights of the Child and responds to the needs of children at risk in Timor-Leste.

## 4 WITNESSES IN THE JUSTICE SYSTEM

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Witnesses play an important role in both criminal and civil proceedings, by providing relevant oral evidence to the court. The Timor-Leste Criminal Procedure Code specifies that a witness when called to give evidence must do so, unless they are exempt (or non-compellable) under Article 125.<sup>44</sup> In most cases, there will be no significant issue preventing a witness from testifying. However, in some cases a witness may be threatened or receive threats against their family's safety. For example, a witness who testifies against their family member could face significant pressure to not testify or lie, or even face threats against their safety. Circumstances such as these show the necessity to protect witnesses in order to guarantee their rights and freedom, along with protecting all evidence related to the criminal or civil matter until the judge makes a decision.

### 4.1 Witness and victim protection measures

A lack of witness protection measures in both criminal and civil proceedings is a serious obstacle to the effective participation of witnesses and victims. If a witness or victim does not feel safe, then it will not be possible for the court to discover all the facts relating to the incident. The trial process, especially the giving of evidence, is a daunting and frightening experience for witnesses and victims. This is even more so, when a witness or victim is required to have direct contact with the defendant during the trial process. This contact can occur because the witness or victim is required to wait in the same space as the defendant, or because they must travel to the court in the same car. Victims can also be made to give evidence in the courtroom in front of the defendant and his/her family. In such situations, there is risk that the defendant will seek to intimidate the witness or victim, so as to obstruct the testimony they may otherwise give.

In JSMP's opinion, the State needs to properly implement witness and victim protection measures. Implementing the following measures will ensure witnesses and victims feel safe during the trial process, and therefore allow them to provide accurate evidence to the court.

An important practical protection measures is ensuring that witnesses (including victims) are transported to the court separately from the defendant. It is not uncommon for defendants, victims and witnesses, to travel several hours in the same car to attend the trial process. During this time, the defendant may seek to intimidate the victim or witness. Victims may also be re-traumatised from the experience, which may impair his/her ability to testify.

The creation of a room in each court where the victim or witness can wait in a safe environment is another important protection measure that should be implemented at low cost. When a victim is made to wait in the same area as the defendant, there is high risk that the victim may be re-victimised or feel threatened. Currently, there are safe waiting rooms only in the Oe-Cusse and Suai District Courts. However, JSMP has heard reports that in a number of cases, the safe waiting rooms are not being used. JSMP urges public prosecutors and the courts to make use of the safe waiting rooms in the Oe-Cusse and Suai District Courts. Safe waiting rooms should be also established at the Baucau and Dili District Courts. Each safe waiting room should have adequate facilities that makes it comfortable for witnesses and victims to wait during the trial process. Such facilities should include a toilet that only those within the room are able to access, and toys for children witnesses or victims to play with.

On numerous occasions in 2016, JSMP has observed cases where the victim or witness was visibly scared about giving evidence in front of the defendant, but no effort was made to protect them. The Law on Witness Protection contains several measures that the court could easily implement, so as to shield the witness or victim from the defendant. Upon a request from the public prosecutor or a demand from the witness or victim, the court can conceal a witness or victim during their testimony.<sup>45</sup> A witness

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<sup>44</sup> Democratic Republic of Timor-Leste, Criminal Procedure Code, Decree Law No. 13/2005 of 22 November 2011.

<sup>45</sup> Timor-Leste, *Law on Witness Protection*, Article 4.

or victim's image can be concealed or their voice distorted. JSMP believes a low-cost way to conceal a witness or victim is by using a physical screen to shield the witness or victim from the defendant's view. The court can also allow a witness or victim to give their testimony via teleconference.<sup>46</sup> When giving testimony via teleconference or when concealed from the defendant, a witness or victim can testify free of fear or restraint. Such measures are easy and low-cost to implement. JSMP recommends that the courts set about implementing such measures so to protect witnesses and victims.

On occasion a witness, victim or their family, having received threats from the defendant, will express their concern to the PNTL or the prosecutor. When this occurs, the prosecutor should arrange for the PNTL to provide adequate protection for the witness or victim and their family during the length of the trial process. Prosecutors ultimately have a responsibility to secure all evidence in a case, including witness or victim testimony.<sup>47</sup> On this basis, prosecutors must also investigate all threats made against the witness, victim or their family, and prosecute those cases which are proved. JSMP believes the prosecution of such cases will serve as examples for the rest of the community that any individual who makes threats against witnesses or victims, and hinders justice, will be dealt with accordingly.

## 4.2 Implementation of the Law on Witness Protection

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 was promulgated on 30 April 2009. However, in the seven years since promulgation the Government has not properly implemented the law.

JSMP observed a number of cases in 2016 where the protection measures contained within the Law on Witness Protection, if implemented, would have been beneficial to guarantee the proper protection of the victim or witnesses. In addition, implementing the measures contained in the Law of Witness Protection would help the court to ascertain the proof of facts.

JSMP believes that the Law on Witness Protection is important in guaranteeing the protection of witnesses, victims<sup>48</sup> and their families<sup>49</sup> in criminal or civil proceedings. Through giving protection, the law encourages witnesses to give evidence of what they saw, and subsequently assist the court to develop an understanding of the criminal or civil matter so to give judgment.

The Law on Witness Protection ensures that any witness or victim who give evidence are to be provided protection before, during and after they give evidence. The law sets out a framework for the protection of all witnesses in civil or criminal proceedings where their or their family's '...lives, physical or psychological integrity, freedom or assets of considerable value are jeopardised due to their contribution to ascertaining the proof of facts or to the discovery of the truth in the judicial proceedings'.<sup>50</sup>

The measures in the Law on Witness Protection should only be applied where '...such measures prove to be necessary and appropriate for the protection of the persons and the accomplishment of the purposes of the proceedings'.<sup>51</sup>

Article 25 of the Law on Witness Protection gives full responsibility to the Government for the enforcement of this law. However, JSMP has observed that since this law was promulgated in 2009, it has not been properly applied to protect witnesses providing their testimony before the court. In a number of cases monitored by JSMP in 2016, the court did not apply all the necessary measures to

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<sup>46</sup> Timor-Leste, *Law on Witness Protection*, Article 5.

<sup>47</sup> Democratic Republic of Timor-Leste, Law on the Public Prosecution Service, Law No. 14/2005 of 3 September 2005.

<sup>48</sup> The definition of witness within the law is broad enough to include victims.

<sup>49</sup> Families is classified in the Law on Witness Protection to be the witnesses '...spouse, relatives in ascending line, children or siblings and any other persons close to the witness'

<sup>50</sup> Democratic Republic of Timor-Leste, *Law on Witness Protection*, Law No. 2/2009 of 6 May 2009, Article 1(1).

<sup>51</sup> Timor-Leste, *Law on Witness Protection*, Article 1 (3).

protect witnesses in accordance with the Law on Witness Protection and the Law Against Domestic Violence, which also contains several articles on witness protection. If implemented then the provisions of the Law on Witness Protection would go some way to protecting witnesses, victims and their families from pressure or threats. JSMP urges the Government to immediately set about implementing the Law on Witness Protection.

**Recommendations**

22. JSMP encourages the courts to apply witness and victim protection measures in every case before the court, especially in cases that endanger the safety of witnesses or victims because of their specific nature, including cases of gender-based violence.
23. JSMP also encourages the Government to set about implementing the Law on Witness Protection.

## 5 CASES INVOLVING STATE AUTHORITIES

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### 5.1 Immunity of Members of Parliament and Government

The Constitution of Timor-Leste provides immunity to Members of Parliament and of the Government.<sup>52</sup> Immunity ensures the protection of Members from civil or criminal proceedings for acts undertaken within the exercise of their parliamentary functions.

Article 94 of the Constitution provides parliamentary privilege for Members of Parliament. In accordance with Article 94.1, Members are protected from all civil, criminal or disciplinary proceedings in regard to votes and opinions expressed by them while performing their functions. However, Article 94.2 allows for parliamentary privilege to be withdrawn, pursuant to the Rules of Procedure of the National Parliament.<sup>53</sup>

Article 113 provides immunity to Members of Government, but places important limits on the scope of the immunities. Members of Government are to be automatically suspended when they are accused of a crime that is punishable with more than 2 years in prison.<sup>54</sup> While, where a Government Member is charged with an offence punishable with a maximum sentence of 2 years or less, then the National Parliament has the discretion to decide if the Member is to be suspended or not.<sup>55</sup>

JSMP has observed in recent years several cases where the defendant has claimed immunity from criminal proceedings because of their position as a Member of Parliament or Government. In these cases, the National Parliament has been slow to act upon Court requests to suspend these Members of their functions. Thus, National Parliament is unnecessarily delaying the start of the trial process.

JSMP believes that in cases involving serious allegations against Members of Government or Parliament, it is important to ensure that issues of immunity do not hamper trials against Parliamentary and Government members, who should be forced to promptly respond to any criminal charges against them. On this basis, it is crucial that the National Parliament, upon receipt of any request, acts promptly to decide if a Member of Parliament or Government is to be suspended of their functions. Though, when a Government Member is charged with a crime punishable by more than 2 years in prison then they must be suspended without delay and without discretion.

#### Case involving Isabel Ximenes <sup>56</sup>

Isabel Ximenes is charged with negligent mismanagement (article 275), embezzlement (article 295) and abuse of power (article 297). The trial of this case was scheduled to commence in November 2015. However, the Dili District Court adjourned the trial on the basis that as Isabel Ximenes was the Secretary of State for Art and Culture at the time she allegedly committed the crimes, the National Parliament needed to issue a resolution to suspend her immunity.

In its 2015 *Overview of the Justice Sector* JSMP analysed this case and recommended that Isabel Ximenes be immediately suspended from her functions as Secretary of State for Arts and Culture.<sup>57</sup> Specifically, as two of the three crimes allegedly committed by Isabel Ximenes carry a maximum

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<sup>52</sup> Democratic Republic of Timor-Leste, *Constitution of the Democratic Republic of Timor-Leste*, approved and decreed on 22 March 2002, Articles 94 & 113.

<sup>53</sup> Democratic Republic of Timor-Leste, *Rules of Procedures of the National Parliament*, Law No. 5/2004 of 5 May 2004, Articles 10 and 11; Democratic Republic of Timor-Leste, *Rules of Procedures of the National Parliament of the Democratic Republic of Timor-Leste*, Law No. 15/2009 of 11 November 2009, Article 8.

<sup>54</sup> Timor-Leste, *Constitution*, Article 113.1

<sup>55</sup> Timor-Leste, *Constitution*, Article 113.2

<sup>56</sup> Case No. 0283/2013.PDDIL

<sup>57</sup> JSMP, 2015 *Overview of the Justice Sector – JSMP Annual Report* (April 2016), available at: [http://jsmp.tl/wp-content/uploads/2012/05/JSMP\\_OJS-2015\\_English\\_FINAL.pdf](http://jsmp.tl/wp-content/uploads/2012/05/JSMP_OJS-2015_English_FINAL.pdf)



sentence greater than 2 years in prison, then in accordance with Article 113.1 Isabel Ximenes should automatically be suspended from her functions, and the case be heard against her immediately.<sup>58</sup>

Nonetheless, the Dili District Court did not hear this matter in 2016 and the Court's request to issue a resolution to suspend the immunity of Isabel Ximenes was ignored by the National Parliament. JSMP is concerned that no progress has been made in this case since it was adjourned in November 2015.

The continuing delays mean that the accused Isabel Ximenes is not being held accountable for the allegations against her and is perceived to be above the law. Isabel Ximenes must respond to the charges against her at the Dili District Court and be seen to be equal before the law. JSMP thus requests that the Dili District Court commence the trial of this case without further undue delay.

#### Case involving Vicente Guterres <sup>59</sup>

The Public Prosecutor alleges that in 2008, Vicente Guterres, the former President of the National Parliament, along with Francisco 'Borlaku' Soares, the former Secretary of State of Institutional Strengthening, and João Rui Amaral, the former Secretary-General of the National Parliament purchased 65 Toyota Prados for all Members of National Parliament, at a total cost of approximately \$2,171,000.

The purchase contract was awarded to Midori Motors, a Korean company based in Dili, without any tender or alternate form of known bidding, as required by law. In addition, the 65 vehicles delivered to the National Parliament was a cheaper model of Toyota than that specified in the contract.

The Public Prosecutor charged the two defendants with economic involvement in business.<sup>60</sup> The penalty for economic involvement in business ranges from 3 to 15 years in prison.

The Court has been unable to commence the trial in this matter because the defendant, Vicente Guterres, continues to claim immunity from being tried for the alleged crime. Because of the defendant's claim these court proceedings remain suspended. In 2016, the Court made two requests to the National Parliament to suspend the defendant and thereby revoke his immunity so that the court matter could commence.

However, in JSMP's opinion the defendant does not have immunity from these court proceedings. Article 94.1 of the Constitution gives Members of Parliament immunity only for any vote and opinion they express while performing their functions. On this basis immunity for Members of Parliament does not extend to other acts performed by a Member. Article 94.2 does allow the National Parliament to withdraw immunity in accordance with the Rules of Procedure for National Parliament.<sup>61</sup> The Rules of Procedure do support and slightly expand the immunity of Members of Parliament, but does not go any further than the immunity provided for in the Constitution. This means that Members of Parliament only have civil and criminal immunity for votes and opinions expressed while performing their official functions.

In this case, as the allegations against the defendant do not relate to an opinion or vote he made while performing his function as a Member of Parliament, he is not immune from these proceedings. Accordingly, JSMP urges the Court to commence the trial of this case without further undue delay, as Vicente Guterres must respond to the charges against him.

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<sup>58</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector – JSMP Annual Report', (April 2016) page 39 & 40, JSMP said that in accordance with Article 113(2) of the Constitution, Isabel Ximenes should be immediately suspended. This Article number was incorrect, and should have been Article 113.1.

<sup>59</sup> Case No. 0945/2014

<sup>60</sup> Timor-Leste, *Penal Code*, Article 299.2

<sup>61</sup> Timor-Leste, *Rules of Procedures of the National Parliament*, Law No. 5/2004, Articles 10 and 11; Timor-Leste, *Rules of Procedures of the National Parliament of the Democratic Republic of Timor-Leste*, Law No. 15/2009, Article 8.

### Recommendations

24. In accordance with Article 113.1 of the Constitution, Isabel Ximenes must be immediately suspended from her functions as Secretary of State for Arts and Culture. Thereby automatically revoking her immunity as a Government Member and allowing the Dili District Court to hear immediately the case against Isabel Ximenes.
25. The Dili District Court must immediately hear the case against Vicente Guterres, who, in accordance with Article 94 of the Constitution, is not immune from the criminal proceedings commenced against him.
26. Training must be provided to the public prosecutors and judges on how to handle criminal or civil cases against a Member of Parliament or Government; specifically, with regard to the immunity and when this must be revoked.

## 5.2 Trials of corruption cases

Corruption impacts significantly on society, posing a major obstacle to the rule of law and undermining people's trust in the political system as well as state institutions and leadership. It is thus important that any allegation of corruption against a state authority is investigated by prosecutors and heard by the courts as this ensures that state authorities are held accountable.

In 2016, JSMP observed 10 corruption cases. JSMP acknowledges the hard work of the Anti-Corruption Commission, prosecutors and courts in cases of corruption, as these cases can be technically complex and time-consuming to investigate and hear. However, of concern is that a number of case decisions did not hold accountable the perpetrator for their intentional misuse of their position and power. JSMP asks the courts to impose sentences on perpetrators of corruption that simultaneously reflect the seriousness of the crime committed and acts as a deterrent to other state authorities from engaging in corruption.

The corruption cases observed by JSMP in 2016 are summarised in **Annexure B**.

### Case involving Emília Pires and Madalena Hanjam <sup>62</sup>

#### Legal facts

The Public Prosecutor alleged that in 2012, Madalena Hanjam sent a request to Prime Minister Xanana Gusmao to approve contingency funds for the Ministry of Health, totalling US\$1.3 million. A percentage of the total money was to be used to purchase 100 orthopaedic beds for use at the Guido Valdares National Hospital (HNGV). Other medical equipment was to be purchased for the national hospital and health centres. The adjustable beds were to be installed in the National Hospital.

Madalena Hanjam then sent another request asking the Prime Minister to approve a single source procurement for the project to purchase the beds from a company owned by the husband of Emília Pires, who resides in Australia.

Regarding Emília Pires, the Public Prosecution Service alleged that after Prime Minister Xanana approved the contingency funds, Emília Pires opened a bank account to allow her husband to access money in Australia to purchase these goods.

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<sup>62</sup> Case No. 1212/12.PDDIL; JSMP, 'Tribunál Distritál Dili kondena pena prizaun tinan 7 ba eis-Ministra Finansa no tinan 4 ba eis-Vice Ministra Saúde JSMP: sentensa ba kondenada Emilia Pires bele la-ihá sentidu-23-Dezemburu-2016' (23 December 2016), available at: [http://jsmp.tl/wp-content/uploads/2016/01/PrDesizaunbaKazuHanzamnoEMILIA\\_Tetum.pdf](http://jsmp.tl/wp-content/uploads/2016/01/PrDesizaunbaKazuHanzamnoEMILIA_Tetum.pdf)

The Public Prosecutor alleged that the two defendants had preparatory meetings to oversee the purchase of the beds, including a meeting to decide on the single source procurement. It was also alleged that because of the defendants' actions the State lost \$280,000.

### **Indictment by the Public Prosecutor**

The Public Prosecutor alleged that the defendants committed intentional mismanagement (Article 274) and economic involvement in business (Article 299). These crimes have penalties of 1 – 4 years and 3 – 10 years respectively.

Both defendants rejected the accusations made against them.

### **Court proceedings**

The Dili District Court continued to hear this case in 2016. Both defendants exercised their right to remain silent and did not give evidence at the trial.

However, several key witnesses gave evidence for the defence including: Mari Alkatari, Fretilin Party Secretary-General; Dr. Sérgio Lobo, Ex Minister of Health; Xanana Gusmão, Former Prime Minister; José Bareto, Vice Director of ETDA; José Ramos-Horta, Former President of Timor-Leste; Jose Antonio Fatima Verdial, Director General at the Ministry of Finance; and Francisco Guterres, Former Secretary of State for Security.

After hearing witness testimony, the Court proceeded to hear closing submissions. On 20 September 2016, the Public Prosecutor commenced their closing submission. They stated that in 2011 and 2012, the two defendants conspired to profit from the project to purchase beds, by awarding this project to Emília Pires' husband's company. Further, the two defendants used their positions to intentionally violate the Law on the Procurement of Goods and Services. Specifically, Madalena Hanjam violated the law in relation to single source procurement and the two defendants violated the law by their action of awarding a project to a person who has a direct relationship with Emília Pires. The Public Prosecutor alleged that the defendants violated the principles of transparency and independence. The Public Prosecutor asked the court to sentence the defendants to 10 years in prison, and to order the two defendants to pay jointly \$100,000 in civil compensation to the State.

On 22 September 2016, Madalena Hanjam's lawyer gave closing submissions. They requested that the Court acquit her of all charges, on the basis that the evidence presented to the Court established that Madalena Hanjam was following an order from the Minister of Health. They stated that the plan to purchase the beds was from the Ministry of Health, and when Madalena Hanjam made the request for the release of the contingency funds it was in accordance with this plan. In relation to the validity of the process to purchase the beds, the Defence specified that the two defendants had followed the appropriate rules of procurement and involved both the Ministry of Health and Ministry of Finance.

The defence stated that no evidence had been presented by the Public Prosecutor to establish that Madalena Hanjam had misused her position to provide a direct economic advantage to herself or Emília Pires. Further, the defence, drawing on witness testimony, explained that the role of the Ministry of Finance is to verify financial matters. This verification is given to the Prime Minister for approval, and then the Ministry of Finance will hand over the procurement and oversight for the processing in accordance with their authority. Thus, as this project involved the Ministry of Health, it was this Ministry which was authorised to carry out the procurement.

On 22 September 2016, the Court received a request from the Government to lift the prohibition on travel imposed on the Emília Pires, so that she may travel and represent Timor-Leste in meetings for the G7+. In accordance with Article 192 of the Criminal Procedure Code, the Court ordered that Emília Pires could travel overseas. However, she was required to return to Timor-Leste on 19 October 2016 and handover her passport to the Court the following day. The closing submissions of Emília Pires were postponed to 20 October 2016.

On 18 October 2016, Emília Pires filed a request to postpone her return to Timor-Leste until 1 November and to dismiss her closing submission. The Court granted Emília Pires' request to not make closing submissions. However, the Court rejected Emília Pires' request to postpone her return to Timor-Leste, and ordered that she must present herself and her passport to the Court by 24 October 2016.

On 24 October 2016, the Emília Pires failed to appear at Court as she was still overseas. The Court permitted Emília Pires' lawyers request that she surrender her passport by the 29 October 2016.

On 4 November 2016, Emília Pires failed again to appear before the Court. This time the Court ordered Emília Pires to provide documentation as to why she had not returned to Timor-Leste. Emília Pires' lawyers provided these documents on 16 November 2016. After reviewing the documents, the Court found the documents were not authentic and declared that they would not grant any further extensions. Thus, Emília Pires was ordered to present herself to the Court immediately.

On 19 November 2016, Emília Pires, a Portuguese citizen<sup>63</sup>, requested that the Dili District Court arrange for the case to be moved to Portugal, in accordance with the Law on International Criminal Justice Cooperation.<sup>64</sup>

On 25 November 2016, closing submissions were continued. The Public Prosecutor reiterated that the charges against the defendants had been proven. They requested the court sentence the defendants to 10 years in prison and order the two defendants to jointly pay \$100,000 in civil compensation to the State. Madalena Hanjam's lawyers restated their earlier closing submissions and expressed criticism of the way the Public Prosecutor had handled this case.

On 30 November 2016, the Court ordered that when Emília Pires returns to Timor-Leste she is to be automatically detained and the Court notified of this. The Court also ruled against her application to have the case heard in Portugal.

On 6 December 2016, the Court ordered Emília Pires to be placed in preventative detention. On 14 December 2016, Emília Pires' lawyer filed an application with the Court of Appeal. The application questioned the validity of the Court's order from 30 November 2016.

### **Decision from the Dili District Court**

On 20 December 2016, the Court read out its ruling in this case and stated that the actions of the defendants fulfilled the crime of economic involvement in business in accordance with Article 299.1 of the Penal Code. Additionally, the Court found the defendants were guilty of violating the law on procurement.<sup>65</sup>

However, the Court acquitted the defendants of the crime of intentional mismanagement in accordance with Article 274 of the Penal Code. The Court also found that the two defendants had not caused the State to suffer a loss in accordance with Article 299.2 of the Penal Code.

The Court sentenced Emília Pires to 7 years in prison and Madalena Hanjam to 4 years in prison. The court ordered both defendants to pay \$100 each in court costs.

### **Commentary**

Corruption is a serious crime that can damage the welfare and stability of a State as well as impede economic and social development. The crime of corruption can increase poverty because it may negatively impact the State's financial position as well as violate the civil and economic rights of citizens.

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<sup>63</sup> Emilia Pires holds citizenship in Timor-Leste, Portugal and Australia.

<sup>64</sup> Democratic Republic of Timor-Leste, *Law on International Criminal Regime Cooperation*, Law No. 15/2011 of 18 October 2011.

<sup>65</sup> Democratic Republic of Timor-Leste, *Legal Regime of Procurement*, Decree Law No. 5/2005 of 8 November 2005; Democratic Republic of Timor-Leste, *Amendment to the Legal Regime of Procurement*, Decree Law No. 1/2010 of 12 February 2010.

JSMP commends the Public Prosecutors and the Court for their handling of this case and commitment to investigating and trying the two defendants. Cases of corruption are generally quite difficult to investigate and prosecute. But in relation to this case, JSMP observed that the trial process progressed well, despite the case taking a long time to be resolved and the challenges that arose following Emília Pires' abuse of the Court's permission to travel overseas.

However, JSMP is concerned by the Court's granting of permission to Emília Pires to travel overseas while there remains no mechanism in place to arrange for the extradition of Emília Pires. Article 192 prohibits defendants from traveling overseas or leaving their residence without permission. JSMP is also troubled by the Government sending an ex-Minister accused of corruption to represent Timor-Leste in an international forum. In JSMP's opinion, such an act can be interpreted as the Government disregarding the seriousness of allegations of corruption.

In this case, the Court granted permission to Emília Pires to travel overseas for a total of 9 days to represent the State in high level meetings. Thereafter, the Court permitted Emília Pires to extend her return to Timor-Leste. To date, Emília Pires continues to not comply with the Court's order by failing to return to Timor-Leste. This makes it impossible to enforce the sentence on Emília Pires.

A defendant alleged of committing a serious crime must be prohibited from traveling overseas and their passport seized. While Article 192 gives the Court the authority to grant permission, JSMP believes such permission should only be given after complete consideration of the charges against the defendant, the reason for their overseas travel, the likelihood they will return from overseas and whether the defendant has dual citizenship.

JSMP believes that in this case, the Court should have considered the serious nature of the crime alleged against Emília Pires and the status of the court proceedings. As the proceedings were progressed in this case, by Emília Pires travelling overseas, the court process and the decision were delayed. The fact Emília Pires has dual citizenship should have also been considered by the Court, as it makes it very unlikely she will return to Timor-Leste. JSMP's opinion is that the Court should have neither granted authorisation to Emília Pires to travel overseas nor extend her time overseas.

### 5.3 Cases involving state authorities

#### Appeal case involving Calistro Gonzaga

##### Legal facts

The Public Prosecutor alleged that on 20 October 2012 the defendant, as the PNTL Commander of Criminal Investigations, arrested four Indonesian citizens and one African at the Central Hotel. They were suspected of bringing in 6.5 kilograms of illegal drugs in to Timor-Leste. Only 3.5 kilograms of the drugs was handed into the Public Prosecutor, and the remaining 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. Instead, 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 Dili International Airport and sent them back to Indonesia.

##### Indictment by the Public Prosecutor

The Public Prosecutor charged the defendant with abuse of power (Article 297) and failure to report (Article 286). The maximum penalty for abuse of power is 4 years in prison, while the maximum penalty for failure to report is two thirds of the maximum penalty of the unreported crime.

##### Decision from Dili District Court

The case was heard by the District Court in July 2014. The defendant and a number of witnesses gave testimony, after which the District Court heard final recommendations.

Prior to sentencing, the District Court amended the charge from the crime of abuse of power (Article 297) to the crime of kidnapping (Article 160).

On 8 August 2014, the District Court found the defendant's actions fulfilled the crime of kidnapping and failure to report. In particular, the Court found the defendant guilty of one charge of failing to report and the five instances of kidnapping the five foreigners. The Court accumulated the six crimes and imposed a single penalty of nine years in prison against the defendant.

### **Appeal from the defence**

The defendant lodged an appeal against the decision of the court of first instance (Dili District Court). The basis of the appeal was that the Court had not considered key evidence from the defendant nor a request by the defendant to call his superiors who could give supporting evidence.

On 28 October 2014, the Court of Appeal issued their decision to annul the decision from the court of first instance (Dili District Court) and ordered a retrial. In their decision, the Court of Appeal requested that the Dili District Court hear and consider evidence from the defendant's superiors.

### **Retrial decision from Dili District Court**

The Dili District Court reheard this case in 2015. At the retrial, the Dili District Court complied with the Court of Appeal and heard evidence from the defendant's superiors, Xanana Gusmão and Longuinhos Monteiro.

On 25 September 2015, the Court found the defendant guilty. However, based on the new evidence from the defendant's superiors, the court reduced the sentence from 9 years in prison to 8 years and 6 months.

### **Second appeal from the defence**

The defendant again lodged an appeal against the decision in the retrial in the court of first instance.

On 30 November 2016, the Court of Appeal annulled the decision from the retrial in the court of first instance and ordered a second retrial. The Court found that the court of first instance (Dili District Court) had failed to provide proper reasoning for their decision as in their opinion several key facts in the case had not been proven at the retrial.

The Court also found that the court of first instance in sentencing the defendant at the retrial had not complied with Article 281.2 of the Criminal Procedure Code and prepared a report that outlined the facts proven or unproven, as well as the possible factual and legal grounds for the decision.

The Court of Appeal again ordered the court of first instance to retry this case, and when doing so answer five important questions about the case. The five questions stated by the Court of Appeal in their decision are to be answered from the evidence presented by both the public prosecutor and the defendant at the second retrial, and focus on whether certain key facts have been established. This includes if the defendant was complying with orders from his superiors or acting of his own accord.

### **Commentary**

The second retrial in this matter is yet to occur. JSMP urges the Dili District Court to hear the second retrial immediately and comply with the orders from the Court of Appeal.

It is important that all trials in the District Courts and Court of Appeal reflect the principle of 'fair trial'. Article 60 of the Criminal Procedure Code states that a defendant has a right to a fair trial, including the right to provide evidence and request any action deemed necessary for their defence.

JSMP is concerned that the Court of Appeal had to order the Dili District Court to hear evidence from the defendant's superiors, when such evidence is relevant to the defence and enables the Court to assess and determine core facts. The initial refusal by the Dili District Court to hear evidence from the defendant's superiors shows a clear breach of the defendant's right to a fair trial. In JSMP's opinion, the evidence to be given by the defendant's superiors was relevant to the defence. Specifically, this



evidence could have assisted the Court in determining if the defendant was complying with orders or acting of his own accord when he arranged for the five witnesses to return to Indonesia.

It is also concerning that the Court of Appeal's reasoning for the second retrial is on a similar basis as to the Court's reasoning for the first retrial. The fact that on both occasions the Court of Appeal has ordered the Dili District Court to consider key evidence from both the public prosecutor and defendant is of significance. JSMP urges the Dili District Court in all cases to give defendants and public prosecutors appropriate opportunities to present all relevant evidence to the case before the court.

## 6 POLITICAL AND LEGISLATIVE DEVELOPMENTS

### 6.1 National Parliament Legislative Program

In 2016 JSMP, through its Parliamentary Watch Project (PWP), observed the productivity of National Parliament in terms of the legislative process, oversight and political decision-making. In addition to observing productivity, JSMP monitored the attendance of Members of Parliament in the plenary and Committee A of the National Parliament, which has responsibility for Constitutional Affairs, Justice, Public Administration, Local Power and Anti-Corruption.

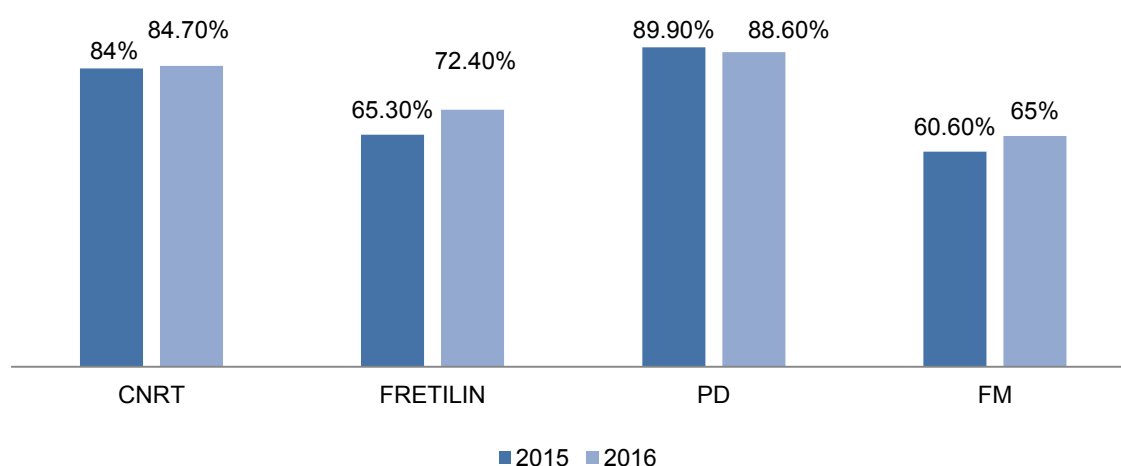
This section outlines the JSMP's observations of the fourth legislative session, which commenced on the 15 September 2015 until 15 July 2016, and also the first part of the fifth legislative session, which commenced on the 15 September 2016 until 31 December 2016.

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

The ability of the plenary to facilitate discussion and decision-making depends on the establishment of a 'quorum'. This means that there needs to be at least one third of Members present in order for plenary to discuss and make a decision on an issue. If quorum cannot be established then the plenary must be suspended. Consequently, the attendance of Members of Parliament has a significant impact on the productivity of the National Parliament.

In 2016, JSMP observed that there were often insufficient numbers to meet quorum during plenaries. This resulted in many plenary sessions being suspended. JSMP also regularly observed while plenary was in session, Members of Parliament moving around and having discussions about their own private matters. This will often result in a plenary session being temporarily halted until these Members of Parliament stop their conversations. Despite some attempts to discipline these members, this does not stop the practice. JSMP is concerned as these practices undermine the productivity and quality of work of the National Parliament.

**Graph 11: Average attendance of each party in the plenary – January–December 2015 compared with January–December 2016**



Graph 12 gives a breakdown of attendance by the parliamentary benches in plenary sessions during 2016, based on JSMP monitoring. This graph shows that Fretilin was the only party in the plenary to improve their average attendance in 2016 compared with 2015.

JSMP also monitored the punctuality and discipline of members in plenary and Committee A. In accordance with Law No. 15/2009, plenary sessions take place on Mondays and Tuesdays between 9am–12.30pm and 3–6pm. However, JSMP observed that in 2016, like previous years, many Members of Parliament continue to disregard the working hours of plenary and would not arrive or depart

according to the predetermined times. JSMP also noted that many of the plenary sessions started late at 10am or 11am, rather than the specified 9am start time.

JSMP recognises that Members of Parliament sometimes have to attend other important activities. However, JSMP believes that members' attendance in plenary, especially when voting is taking place, is more important as it means Members fulfil their duties in accordance with the Constitution and ensure that the National Parliament functions properly.

#### Recommendation

27. In order to give timely attention to important legislative and policy issues, the National Parliament must adhere to the working hours of the plenary and Committees, as set out in Law No. 15/2009.

#### Productivity of the National Parliament in 2016

In 2016, National Parliament discussed, debated and approved 13 draft laws. From these, 3 were amendments, 6 were new laws and 3 related to the State Budget. In comparison with previous years, this was an increase compared to 2015 when the National Parliament approved 10 draft laws and 2014 when 4 draft laws were approved. Table 10 provides information about the laws approved by National Parliament in 2016.

JSMP commends the National Parliament on approving a number of key laws in 2016. These laws include the Consumer Protection Law and the Suku Law. In JSMP's opinion it is imperative that the National Parliament continue to debate and approve laws, which are important to the interests of citizens of Timor-Leste. Additionally, JSMP urges the National Parliament to thoroughly discuss and debate draft laws so to ensure key amendments are made to the law before it is approved.

**Table 10: Laws approved by National Parliament in 2016**

Law	Date of admission	Date of final approval	Date of promulgation	Votes		
				For	Against	Abstain
Law No. 1/2016 General State Budget for 2016	29/10/2015	18/12/2016	14/01/2016	65	0	0
Law No. 2/2016 First Amendment to Law No. 3/2014 of 14 April on Political Parties	07/05/2015	27/10/2016	28/01/2016	44	0	6
Law No. 3/2016 First Amendment to Law No. 10/2005 of 10 August on National Holidays and Official Commemorative Dates	11/03/2016	12/04/2016	16/05/2016	48	0	0
Law No. 4/2016 First Amendment to Law No. 11/2009 of 7 October on Administrative Division of the Territory	07/05/2015	18/04/2016	17/05/2016	32	1	17
Law No. 5/2016 on Procedure for the Granting of Pardon and Commutation	10/07/2015	11/04/2016	17/05/2016	46	0	0
Law No. 6/2016 Electoral Census Law	07/05/2015	16/02/2016	19/05/2016	37	0	2

Law	Date of admission	Date of final approval	Date of promulgation	Votes		
				For	Against	Abstain
Law No. 7/2016 Second Amendment to Law No. 5/2006 of 28 December, on Organs of the Electoral Administration	07/05/2015	05/04/2016	02/06/2016	40	0	0
Law No. 8/2016 Consumer Protection Law	21/01/2014	10/05/2016	05/07/2016	52	0	0
Law No. 9/2016 Suku Law	27/07/2015	24/05/2016	05/07/2016	54	0	1
Law No. 10/2016 Approves the Statute for Parliamentary Officials	03/12/2015	14/06/2016	05/07/2016	39	0	2
Law No. 11/2016 First Amendment to Law No. 1/2014, of 14 January, approving the State General Budget for 2016	28/06/2016	13/07/2016	08/08/2016	61	0	0
Law No. 12/2016 on the Creation of a Regime for Social Security Contributions	22/03/2016	18/10/2016	9/11/2016	47	0	0
Law No. 13/2016 General State Budget for 2017	13/10/2016	09/12/2016	12/01/2017	60	0	0

In 2016 National Parliament approved 17 resolutions. This is a decrease from 2015, in which 25 resolutions were produced. Table 11 shows those resolutions approved by National Parliament in 2016.

**Table 11: Resolutions approved by National Parliament in 2016**

No.	Resolution	Date of admission	Date of final approval	Votes		
				For	Against	Abstain
1.	Resolution No. 1/2016 on the visit of the President of the Democratic Republic of Timor-Leste to Japan	22/02/2016	08/03/2016	12	0	36
2.	Resolution No. 2/2016 on the designation by the National Parliament of two-members for the Press Council	14/03/2016	14/03/2016	52	1	1
3.	Resolution No. 3/2016 on support for the process of negotiating the maritime boundaries of Timor-Leste	04/04/2016	04/04/2016	45	0	0
4.	Resolution No. 4/2016 on support for the candidacy of António Guterres for the post of Secretary-General of the United Nations	19/04/2016	19/04/2016	42	0	0
5.	Resolution No. 5/2016 on the follow-up committee on the process for negotiating the Definitive Delimitation of Maritime	19/04/2016	19/04/2016	40	0	0

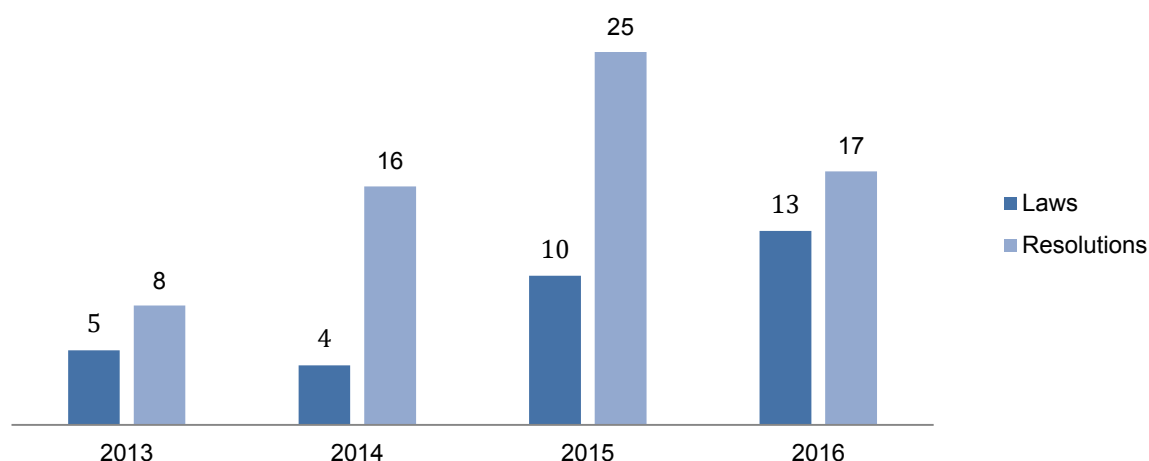
No.	Resolution	Date of admission	Date of final approval	Votes		
				For	Against	Abstain
	Borders with the Commonwealth of Australia					
6.	Resolution No. 6/2016 ratifies, for accession, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage	10/2014	15/06/2015	48	0	0
7.	Resolution No. 7/2016 ratifies, for accession, the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage	10/2014	15/06/2015	48	0	0
8.	Resolution No. 8/2016 ratifies, for accession, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions	10/2014	15/05/2015	48	0	0
9.	Resolution No. 9/2016 recommends the Government to adopt urgent information and sensitization for the preservation of the environment	19/04/2016	09/05/2016	40	0	0
10.	Resolution No. 10/2016 ratifies the Statutes of the International Portuguese Language Institute (ILLP)	11/03/2016	09/05/2016	53	0	0
11.	Resolution No. 11/2016 on the appointment by the National Parliament of three full members and one alternate member for the National Election Commission	04/07/2016	04/07/2016	49	1	1
12.	Resolution No. 12/2016 regarding the constitution of the temporary commission for the supervision and monitoring of the settlement of State debts	14/07/2016	14/07/2016	43	4	4
13.	Resolution No. 13/2016 on the election by the National Parliament of the President of the National Election Commission <sup>66</sup>	16/08/2016	16/08/2016	*	*	*
14.	Resolution No. 14/2016 ratifies the Convention on the Settlement of Investment Disputes between States and Nationals of Other States	23/05/2016	20/06/2016	33	0	0-
15.	Resolution No. 15/2016 on the visit of the President of the Democratic Republic of Timor-Leste to Brazil and Portugal	03/10/2016	03/10/2016	49	0	0
16.	Resolution No. 16/2016 approves the plan of action and budget for the National Parliament for 2017	22/07/2016	04/10/2016	43	0	1

<sup>66</sup> Parliament elected Alcino de Araújo Barris as the Fourth President of the National Parliament with a total of 45 votes in favor, 9 votes for José Agustino Belo and 2 votes for Bernado Cardoso.

No.	Resolution	Date of admission	Date of final approval	Votes		
				For	Against	Abstain
17.	Resolution No. 17/2016 on supporting the Government in the decision to identify Sustainable Development Goal No. 2 (Hunger eradication) as a priority for 2017 and strengthen measures to ensure a healthy and well-nourished diet	18/11/2016	22/11/2016	36	0	0

JSMP measured the productivity of the National Parliament in 2013 through to 2016 based on the number of new laws and resolutions approved each year. Graph 13 shows that the productivity of National Parliament decreased in 2016 compared to 2015; but was an increase in comparison to 2013 and 2014.

**Graph 12: Comparison of the productivity of National Parliament 2013 to 2016**



JSMP observed in 2016 that once again, the National Parliament did not give priority to rescheduling, discussing and approving a range of draft Government or Parliamentary Laws, which JSMP believes are very important to the interests of Timor-Leste.

JSMP urges the National Parliament to reschedule pending draft laws that have passed the time limit for debate and conduct public consultation with relevant parties so that these draft laws can be discussed and approved. The draft laws which are pending or expired in 2016 are still highly relevant and necessary to provide State institutions with the authority and legitimacy necessary to carry out their duties and functions.

**Table 12: Draft laws that are pending and those that have expired in 2016**

Law	Date of Admission
Draft Government Law No. 19/II on Municipal Electoral	18/02/2008
Draft Government Law No. 9/II on Firearms	02/04/2008
Draft Government Law No. 18/II on Local Government	18/02/2009
Draft Parliamentary Law No. 20/II on Establishment of a Memorial Institution	16/06/2010
Draft Parliamentary Law No. 19/II on a National Program for Reparations	16/06/2010
Draft Parliamentary Law No. 21/II on Anti-Corruption	08/11/2011



## 6.2 Development of the justice sector by the National Parliament and Government

In 2016, the National Parliament and Government made minimal progress in the development of the justice sector. The approval and promulgation of the Law on the Procedure for the Granting of Pardon and Commutation in 2016 was a positive step for the development of the justice sector in Timor-Leste. However, a number of draft laws related to the development of the justice sector were not discussed or approved. This includes the draft Anti-Corruption law, which JSMP regards as foundational to preventing and combating corruption in Timor-Leste. Also, not debated were the two draft laws on Reparations for Victims and a Public Memorial Institute. These two draft laws are critical in the consideration of such issues as memorialisation along with medical treatment and education of victims. JSMP urges the National Parliament to immediately reschedule for debate these three draft laws.

JSMP in 2016 continued to advocate for the development of the justice sector. A number of submissions were made by JSMP to the National Parliament, including on the proposed amendments to the remuneration law for court actors<sup>67</sup>, the draft land law<sup>68</sup> and the draft law on combatting and preventing human trafficking.<sup>69</sup>

### Law on the procedure for the granting of pardon and commutation

Article 85(i) of the Constitution specifies the President has the power to grant pardons and commute sentences after consultation with the Government. The exercise of this power by the President has previously caused significant controversy.<sup>70</sup> JSMP has continually advocated for the creation of an organic law to regulate the process for granting pardons and commute sentences.<sup>71</sup>

In June 2015 a draft law prepared by the Ministry of Justice was submitted to the National Parliament. It was forwarded to Committee A for consideration on 14 September 2015, and in January 2016 Committee A held a public audience with civil society about the draft law. JSMP analysed this draft law and submitted to Committee A its submission on 21 January 2016.<sup>72</sup>

JSMP's submission outlined that there has been confusion as to the extent of the power held by the President to grant pardons, and the way this should be administered. In JSMP's opinion, because the Constitution does not specify the procedure for granting pardons or commuting sentences, then this

<sup>67</sup> JSMP, *Submisaun – Proposta Lei Nú. 42/III (4a) – Alterasaun Dahuluk ba Lei Nú. 10/2009 ne'ebé estabesele Estatutu Remuneratúriu ba Majistradu Judisiál, Majistradu Ministériu Públiku no Ajente sira Defensoria Pública 2) Projetu Lei Nú. 10/III (4ª) – Rejime Tranzitóriu Rekrutamentu Juís, Prokuradór no Defensor Públiku no Alterasaun Daruak ba Lei Órganika Kámara Konta nian ne'ebé aprova ho Lei Nú. 9/2011 no Altera ho Lei Nú. 3/2013*, (October 2016), available at: [http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu\\_L.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu_L.pdf)

<sup>68</sup> JSMP, *Pakote Lei Ba Rai – Rezime Espesiál ba Definisaun na'in ba Sasán Móvel; Lei Baze Ba Ordenamentu Teritóriu*, (June 2016), available at: [http://jsmp.tl/wp-content/uploads/2013/03/Submisaun-Pakote-Lei-ba-Rai-ba-PN-versaun-final\\_2016-paraser-daruak.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Submisaun-Pakote-Lei-ba-Rai-ba-PN-versaun-final_2016-paraser-daruak.pdf)

<sup>69</sup> JSMP, *Submisaun husi ALFeLa no JSMP kona-ba ezbosu Lei Prevensaun no Kombate Tráfiku Umanu* (July 2016), available at: <http://jsmp.tl/wp-content/uploads/2013/03/Anti-Human-Trafficking-draft-Law-JSMP-ALFeLa-version.pdf>

<sup>70</sup> JSMP, *2010 Overview of the Justice Sector – JSMP Annual Report (April 2010)*, available at: <http://jsmp.tl/wp-content/uploads/2012/05/Overview-of-Justice-Sector-Report-2010.pdf>

<sup>71</sup> JSMP, *Presidential Power to Grant Pardons and reduce sentences: The need for a clear law – JSMP Submission to Ministry of Justice*, (October 2010), available at: [http://jsmp.tl/wp-content/uploads/2013/03/JSMPSubmisaunindultubaMoJOct\\_t.pdf](http://jsmp.tl/wp-content/uploads/2013/03/JSMPSubmisaunindultubaMoJOct_t.pdf)

<sup>72</sup> JSMP, *Opinion about the Draft Law on the Process for Granting a Pardon*, (January 2016), available at: [http://jsmp.tl/wp-content/uploads/2013/03/Paraser-kona-ba-Lei-Indultu-Presidensial\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Paraser-kona-ba-Lei-Indultu-Presidensial_TETUM.pdf)

allows for differing interpretation of the procedure by each President and Government. On this basis, JSMP highlighted there was a significant need for a law on the procedure for granting pardons or commuting sentences. The implementation of such a law would ensure that there was consistency between Presidents and the Government when granting pardons or commuting sentences.

Following their consultation with civil society, Committee A amended the draft law and submitted it to the plenary for discussion and approval. On 11 April 2016, the plenary approved the draft law and sent it to the President for promulgation.

On 4 May 2016, JSMP wrote to the President and outlined their position with regard to the law.<sup>73</sup> JSMP reiterated that there was a significant need for a law that specify the procedures, which the President must follow when granting pardons or commuting sentences. JSMP acknowledged that such a law would not limit the authority of the President. Rather, the law would set out the procedures a President and the Government must follow.

The Law on the Procedure for Granting Pardons or Commuting Sentences was promulgated on the 17 May 2016. JSMP commends the President and the National Parliament on approving and promulgating this crucial law. JSMP believes that with this new law there will be greater consideration of the impact of granting a pardon or commuting a sentence.

#### **Draft law on the creation of a Timorese Bar Association**

The draft law on the creation of a Timorese Bar Association was developed by the Ministry of Justice and submitted to the National Parliament on 15 May 2015. On 26 June 2015 the draft law was forwarded to Committee A, who prepared an opinion paper on 29 June 2015. Based on JSMP's observations, there was no progress on the draft law in 2016.

JSMP believes the creation of a Bar Association is a foundational step in regulating the legal profession in Timor-Leste. A Timorese Bar Association will promote professional competence, enforce standards of ethical conduct, and promote a spirit of public service among members of the legal profession in Timor-Leste.

On this basis, JSMP together with the International Bar Association Human Rights Institute (IBAHRI) analysed the draft law and prepared a submission for Committee A in late 2016. As part of this process, JSMP and IBAHRI organised two workshops on the draft law. These workshops were attended by local and international legal practitioners, and presented an opportunity for practitioners to express their opinions on the draft law and recommendations for amendments. In the submission JSMP and IBAHRI provided an in-depth explanation of its analysis and interpretation of the draft law to help Members of Parliament better understand the draft law before discussing and approving it. This submission is to be presented to Committee A in early 2017. JSMP urges Committee A and the National Parliament to give priority to discussing and approving this draft law.

#### **Recommendation**

28. The Government and National Parliament should give priority to those draft laws that are important to the development of the justice sector, including the draft Anti-Corruption law and the draft law on the creation of a Timorese Bar Association.

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<sup>73</sup> JSMP, *Letter to the President of the Republic about the Proposed Pardon Law, (May 2016)*, available at: <http://jsmp.tl/wp-content/uploads/2013/03/Karta-ba-Prezidente-da-Repu%CC%81blika-kona-ba-Proposta-Lei-Indultu-versaunMaun-Luis+ZeP-ikus.pdf>

## 7 CONCLUSION AND RECOMMENDATIONS

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In 2016, important progress continued to be made by the Timor-Leste justice sector. This progress was made despite the justice sector facing a number of ongoing challenges, including a reduced budget, a lack of resources and the use of Portuguese language.

JSMP's monitoring in 2016 established that gender-based violence continues to represent an overwhelming majority of crimes brought before the courts in Timor-Leste. JSMP has also identified the pressing need to ensure new and existing court actors continue to receive targeted training in charging and sentencing of sexual violence cases, along with identifying and applying aggravating articles to the charge against the defendant in cases of violence of against children.

As aforementioned, the aim of this report is to provide useful information to inform the public of the progress achieved, and challenges faced, by the Timor-Leste justice sector in 2016. Based on the analysis contained in this report, JSMP offers the following recommendations:

### **Key developments in the justice sector**

1. The co-operation protocol, between Timor-Leste and Portugal, in the area of justice must be implemented immediately.
2. The Legal Training Centre must recruit capable and experienced trainers, and then immediately recommence the training course for new Timorese magistrates.
3. The mandate of the Legislative Reform and Justice Sector Commission must be extended beyond August 2017.
4. The Government must review and set about implementing the recommendations by the Commission on reforming criminal law in Timor-Leste.
5. The Government, especially the Ministry of Justice, must work with State institutions and civil society organisations to implement the recommendations made by the Working Group of the UN Human Rights Council.

### **Resources of the justice sector**

6. The Government and National Parliament should allocate sufficient funds to the Office of the Prosecutor-General and the Office of the Public Defender so to ensure they can fulfil their mandate and provide legal assistance to those in need.
7. Sufficient funds must be allocated to allow the Courts to recruitment more court clerks and administrative staff.
8. The Government must ensure that the Legal Training Centre recommences training immediately and is provided with appropriate resources to train additional legal students in the future.

### **Mobile Courts**

9. The District Courts must give appropriate time to each case heard in the mobile courts.
10. Mobile Court cases must be heard by the District Courts in appropriate locations, which allow for proceedings to be closed to the public.

### **Court of Appeal**

11. The Court of Appeal should conduct more hearings and allow those proceedings to be accessed by court monitoring to ensure they are transparent and open to public scrutiny.

### **Language**

12. Training must be provided to all official court interpreters so to increase their legal knowledge and understanding of legal terminology.
13. The courts must find additional official interpreters to translate court proceedings in to and from local languages.

### **Gender equality**

14. The Office of the Prosecutor General should develop a legal guideline that outlines the key elements of Article 145, 146 and 154 of the Penal Code, presents case examples where defendants have been correctly charged, and provides guidance as to sentencing submissions.
15. A monitoring system must be developed and implemented to ensure defendants comply with the certain conditions or rules of conduct imposed on them for the duration of their sentence.
16. When a defendant fails to comply with the conditions or rules of conduct imposed on them, then the court must amend or revoke the defendant's suspended sentence in accordance with Articles 72 and 73 of the Penal Code.
17. A sentencing guideline should be developed to ensure consistency in sentencing of sexual violence cases. This guideline should outline general sentencing principles for sexual violence cases, aggravating and mitigating factors using examples, rules for repeat offenders, guidance on alternative penalties and provide for the calculation of civil compensation.
18. The State should take immediate steps to implement the CEDAW Committee's recommendations, especially in relation to
  - a. Establishing an effective legal aid system which eliminates the economic barriers faced by women in gaining access to justice.
  - b. Allocating extra resources to enhance the infrastructure, quality and accessibility of the formal justice system, particularly in rural areas.
19. The State must ensure there is State funding for independent legal aid organisations helping women.

### **Children in the justice system**

20. In cases of violence against children the Court must impose sentences that protect children from violence and reflects the severity of the crime committed, as well as the psychological and physical trauma suffered by the victim.
21. JSMP encourages the translation of the draft law on child protection into Tetum and English, followed by open consultation so to ensure the draft law is fully compliant with the Convention on the Rights of the Child and responds to the needs of children at risk in Timor-Leste.

### **Witnesses in the justice system**

22. JSMP encourages the courts to apply witness and victim protection measures in every case before the court, especially in cases that endanger the safety of witnesses or victims because of their specific nature, including cases of gender-based violence
23. JSMP also encourages the Government to set about implementing the Law on Witness Protection.

### **Cases involving State authorities**

24. In accordance with Article 113.1 of the Constitution, Isabel Ximenes must be immediately suspended from her functions as Secretary of State for Arts and Culture. Thereby automatically revoking her immunity as a Government Member and allowing the Dili District Court to hear immediately the case against Isabel Ximenes.

25. The Dili District Court must immediately hear the case against Vicente Guterres, who, in accordance with Article 94 of the Constitution, is not immune from the criminal proceedings commenced against him.
26. Training must be provided to the public prosecutors and judges on how to handle criminal or civil cases against a Member of Parliament or Government; specifically, with regard to the immunity and when this must be revoked.

**Political and legislative development**

27. In order to give timely attention to important legislative and policy issues, the National Parliament must adhere to the working hours of the plenary and Committees, as set out in Law No. 15/2009.
28. The Government and National Parliament should give priority to those draft laws that are important to the development of the justice sector, including the draft Anti-Corruption law and the draft law on the creation of a Timorese Bar Association.

## ANNEX A – STATISTICS

**Table A – Criminal cases monitored by JSMP in 2016**

Case type	Article(s)	Number of cases
Simple offences against physical integrity characterised as domestic violence	Article 145 PC & Article 35 LADV	356
Simple offences against physical integrity	Article 145 PC	187
Mistreatment of a spouse characterised as domestic violence	Article 154 PC & Article 35 LADV	46
Threats	Article 157 PC	35
Property damage	Article 258 PC	34
Failure to fulfil an obligation to provide food assistance	Article 225 PC	20
Driving without a license	Article 207 PC	16
Negligent homicide (Manslaughter)	Article 140 PC	12
Larceny	Article 251 PC	11
Aggravated property damage	Article 259 PC	10
Reciprocal offences against physical integrity	Article 151 PC	9
Sexual abuse of a minor with penetration	Article 177(1) PC	9
Simple offences against physical integrity & Property damage	Articles 145 & 258 PC	8
Rape	Article 172 PC	8
Illegal gambling	Article 322 PC	8
Smuggling	Article 316 PC	8
Simple offences against physical integrity & Threats	Articles 145 & 157 PC	7
Serious offences against physical integrity	Article 146 PC	6
Aggravated sexual abuse of a minor with penetration	Articles 177(1) & 182 PC	6
Aggravated larceny	Article 252 PC	5
Negligent offences against physical integrity	Article 148 PC	5
Aggravated fraud	Article 267 PC	4
Threats & Property damage	Articles 157 & 258 PC	4
Sexual acts with an adolescent	Article 178 PC	4
Aggravated appropriation through abuse of trust	Article 257 PC	4
Property damage with use of violence	Article 260 PC	4
Attempted homicide	Articles 23 & 138 PC	3
Aggravated homicide	Article 139 PC	3
Sexual exhibitionism	Article 181 PC	3

Case type	Article(s)	Number of cases
Obstructing public authority	Article 243 PC	3
Economic involvement in business	Article 299 PC	3
Prohibited weapons	Article 211 PC	3
Fraud	Article 266 PC	3
Sexual abuse of a minor with other sexual act	Article 177(2) PC	3
Aggravated sexual abuse of a minor with other sexual act	Article 177(2) & 182 PC	3
Attempted rape	Article 23 & 172 PC	3
Aggravated rape characterised as domestic violence	Article 172 & 173 PC & Article 35 LADV	3
Simple offences against physical integrity characterised as domestic violence & Threats	Article 145 PC & Article 35 LADV & Article 157 PC	3
Embezzlement	Article 295 PC	2
Negligent homicide (manslaughter) & Driving without a license	Articles 140 & 207 PC	2
Misappropriation of public assets	Article 296 PC	2
Simple offences against physical integrity, Threats & Property damage	Articles 145, 157 & 258 PC	2
Sexual exploitation of a third party	Article 174 PC	2
Attempted aggravated homicide	Articles 23 & 139 PC	2
Simple offences against physical integrity characterised as domestic violence & Property damage	Article 145 PC & Article 35 LADV & Article 258 PC	2
Homicide	Article 138 PC	2
Aggravated rape	Article 172 & 173 PC	2
Serious offences against physical integrity characterised as domestic violence	Article 146 PC & Article 35 LADV	2
Mistreatment of a minor characterised as domestic violence	Article 155 PC & Article 35 LADV	2
Smuggling & Avoidance of custom duties	Articles 316 & 317 PC	2
Forgery of documents or technical report	Article 303 PC	2
Abduction of a minor	Article 226 PC	1
Economic involvement in business & Forgery of documents or technical report	Articles 299 & 303 PC	1
Intentional mismanagement & Economic involvement in business	Articles 274 & 299 PC	1
Homicide & Simple offences against physical integrity	Articles 138 & 145 PC	1
Sexual coercion	Article 171 PC	1
Human trafficking	Article 163 PC	1
Reciprocal offences against physical integrity & Threats	Articles 151 & 157 PC	1



Case type	Article(s)	Number of cases
Attempted sexual acts with an adolescent	Articles 23 & 178 PC	1
Hazardous driving & Disobedience	Articles 209 & 244 PC	1
Abduction	Article 161 PC	1
Mistreatment of a spouse characterised as domestic violence & Failure to fulfil an obligation to provide food assistance	Article 154 PC & Article 35 LADV & Article 225 PC	1
Attempted homicide & Serious offences against physical integrity	Articles 23, 138 & 146 PC	1
Attempted homicide characterised as domestic violence	Articles 23 & 139 PC & Article 35 LADV	1
Serious offences against physical integrity & Aggravated property damage	Articles 146 & 259 PC	1
Aggravated homicide, Simple offences against physical integrity, Aggravated larceny, Property damage & Arson	Articles 139, 145, 252, 258 & 263 PC	1
Aggravated serious offences against physical integrity	Articles 146 & 147 PC	1
Serious offences against physical integrity & Property damage	Articles 146 & 258 PC	1
Simple offences against physical integrity, Threats, Larceny & Property damage	Articles 145, 157, 251 & 258 PC	1
Intentional mismanagement, Embezzlement & Forgery of documents or technical report	Articles 274, 295 & 303 PC	1
Embezzlement, Aggravated forgery & Mismanagement of public funds	Articles 295, 304 & 319 PC	1
Aggravated larceny, Property damage & Fraud	Articles 252, 258 & 266 PC	1
Larceny & Property damage	Articles 251 & 258 PC	1
Aggravated sexual abuse of a minor with penetration characterised as domestic violence	Articles 177(1) & 182 PC & Article 35 LADV	1
Serious offences against physical integrity characterised as domestic violence & Destruction, theft, hiding or profaning of a corpse	Article 139 PC & Article 35 LADV & Article 224 PC	1
Attempted sexual coercion	Articles 23 & 171 PC	1
Crimes against fauna or flora	Article 217 PC	1
Threats & Robbery	Articles 157 & 253 PC	1
Usurpation of property	Article 261 PC	1
Sexual exploitation of a third party & Child prostitution	Articles 174 & 175 PC	1
Aggravated property damage & Extortion	Articles 259 & 270 PC	1
Tax fraud & Illegal gambling	Articles 314 & 322 PC	1
Infanticide	Article 142 PC	1
Passive corruption for a lawful act & Active corruption	Articles 293 & 294 PC	1
Simple offences against physical integrity & Unlawful entry	Articles 145 & 185 PC	1

Case type	Article(s)	Number of cases
Type of Negligence	Article 16 PC	1
Negligent offences against physical integrity & Driving without a license	Articles 148 & 207 PC	1
Simple offences against physical integrity characterised as domestic violence & Negligent offences against physical integrity	Article 145 PC & Article 35 LADV & Article 148 PC	1
Aggravated sexual abuse against a minor with other sexual act in joinder	Articles 177(2), 182 & 35 PC	1
Arson	Article 263 PC	1
Attempted aggravated sexual abuse against a minor with penetration	Articles 23, 177(1) & 182 PC	1
Sexual abuse of a person incapable of resistance	Article 179 PC	1
Continuous sexual abuse against a minor with penetration characterised as domestic violence	Articles 41 & 177(1) PC & Article 35 LADV	1
Abduction & Rape	Articles 161 & 172 PC	1
Aggravated appropriation through abuse of trust & Forgery of documents or technical report	Articles 257 & 303 PC	1
Disobedience	Article 244 PC	1
Rape & Unlawful entry	Articles 172 & 185 PC	1
Destruction, theft, hiding or profaning of a corpse	Articles 224 & 30 PC	1
Passive corruption for a lawful act	Article 293 PC	1
Attempted homicide characterised as domestic violence	Articles 23 & 138 PC & Article 35 LADV	1
Rape	Article 285 KUHP	1
Drug trafficking & Prohibition from driving and cancellation of license to carry a weapon	Article 1 Law of the Republic of Indonesia No. 5/1997 on Psychotropic Drugs & Article 1(6) Law of the Republic of Indonesia No. 35/2009 on Narcotics & Article 101 PC	1
Drugs	Article 81(1)(a) & (2)(a) Law of the Republic of Indonesia No. 22/1997 on Narcotics	1
Drug trafficking & Prohibited weapons	Article 82 Law of the Republic of Indonesia No. 22/1997 on Narcotics & Article 211 PC	1
<b>Total criminal cases</b>		<b>941</b>

**Table B – Civil cases JSMP monitored in 2016**

Case type	Article(s)	Number of cases
Need to regulate the exercise of parental authority	Article 1787 CC	3
Duty to assist	Article 1563 CC	2
Adoption	Article 1853 CC	2
Divorce	Article 1523 CC	1
General voluntary domicile	Article 79 CC	1
Succession	Articles 1895 & 1998 CC & Articles 22, 846 & 790 CPC	1
Land dispute and home/property dispute	-	1
Land dispute	-	1
Substitute for deviations and other undue payments and financial liability penalties	Articles 230, 420, 670 & 690 CPC & Law No. 9/2011 on the Organic Chamber of Auditors of the Superior Administrative, Tax and Accounts Court	1
Property lending guarantee	-	1
Duty to contribute to responsibilities of family life	Article 1564 CC	1
Divorce by mutual consent	Article 1652, 1653, 1654 & 1655 CC	1
<b>Total civil cases</b>		<b>16</b>

**Table C – Cases JSMP monitored in 2016 by Courts**

Court	Criminal Cases	Civil Cases	Total
Baucau District Court	204	1	205
Dili District Court	386	10	396
Oe-Cusse District Court	167	3	170
Suai District Court	184	1	185
Court of Appeal	0	1	1
<b>Total</b>	<b>941</b>	<b>16</b>	<b>957</b>

**Table D – Case statistics from all Courts (Court of Appeal <sup>74</sup> and District Courts) in 2016**

<b>Criminal cases</b>	<b>Total</b>
Pending from 2015	2827
New cases	3449
Judgments	2612
<b>Total pending</b>	<b>3664</b>

<b>Civil cases</b>	<b>Total</b>
Pending from 2015	856
New cases	298
Judgments	184
<b>Total pending</b>	<b>970</b>

**Table E – Case statistics from the Court of Appeal for 2016****Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	30	29	37	42	47	57	64	81	83	86	83	77	30
<b>New Cases</b>	16	16	18	16	17	21	29	2	17	28	16	26	222
<b>Judgments</b>	17	8	13	11	7	14	12	0	14	31	22	2	151
<b>Total Pending</b>	<b>29</b>	<b>37</b>	<b>42</b>	<b>47</b>	<b>57</b>	<b>64</b>	<b>81</b>	<b>83</b>	<b>86</b>	<b>83</b>	<b>77</b>	<b>101</b>	<b>101</b>

**Table F – Case statistics from Dili District Court for 2016****Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	1910	2027	2097	2091	2164	2184	2163	2269	2299	2333	2232	2231	1910
<b>New Cases</b>	205	197	119	200	182	188	236	69	115	96	131	215	1953
<b>Judgments</b>	88	127	125	127	162	209	130	39	81	197	132	123	1540
<b>Total Pending</b>	<b>2027</b>	<b>2097</b>	<b>2091</b>	<b>2164</b>	<b>2184</b>	<b>2163</b>	<b>2269</b>	<b>2299</b>	<b>2333</b>	<b>2232</b>	<b>2231</b>	<b>2323</b>	<b>2323</b>

<sup>74</sup> JSMP notes that the Court of Appeal were not able to provide the total civil cases registered at the Court of Appeal in 2016 to JSMP.

**Civil Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	546	543	551	558	562	566	575	582	580	587	583	603	546
<b>New Cases</b>	17	25	19	13	15	17	19	0	17	10	28	0	180
<b>Judgments</b>	20	17	12	9	11	8	12	2	10	14	8	0	123
<b>Total Pending</b>	<b>543</b>	<b>551</b>	<b>558</b>	<b>562</b>	<b>566</b>	<b>575</b>	<b>582</b>	<b>580</b>	<b>587</b>	<b>583</b>	<b>603</b>	<b>603</b>	<b>603</b>

**Table G – Case statistics from Baucau District Court for 2016****Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	515 <sup>75</sup>	548	572	533	520	542	575	570	570	555	540	551	515
<b>New Cases</b>	71	70	23	39	82	86	30	0	18	23	53	52	547
<b>Judgments</b>	38	46	62	52	60	53	35	0	33	38	42	59	518
<b>Total Pending</b>	<b>548</b>	<b>572</b>	<b>533</b>	<b>520</b>	<b>542</b>	<b>575</b>	<b>570</b>	<b>570</b>	<b>555</b>	<b>540</b>	<b>551</b>	<b>544</b>	<b>544</b>

**Civil Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	170	171	175	181	182	186	184	190	191	189	191	191	170
<b>New Cases</b>	5	5	8	2	6	3	8	1	5	10	7	5	65
<b>Judgments</b>	4	1	2	1	2	5	2	0	7	8	7	3	42
<b>Total Pending</b>	<b>171</b>	<b>175</b>	<b>181</b>	<b>182</b>	<b>186</b>	<b>184</b>	<b>190</b>	<b>191</b>	<b>189</b>	<b>191</b>	<b>191</b>	<b>193</b>	<b>193</b>

<sup>75</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector', (April 2016), page 56, JSMP said that there were 538 pending cases in December 2015. This figure was incorrect, as the Baucau District Court included 23 pending cases more, and the actual total of pending cases as at 31 December 2015 was 515.

**Table H – Case statistics from Oe-Cusse District Court for 2016****Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	25 <sup>76</sup>	35	31	23	44	44	48	33	33	47	43	34	25
<b>New Cases</b>	37	27	23	45	24	36	21	1	26	26	4	30	300
<b>Judgments</b>	27	31	31	24	24	32	36	1	12	30	13	2	263
<b>Total Pending</b>	<b>35</b>	<b>31</b>	<b>23</b>	<b>44</b>	<b>44</b>	<b>48</b>	<b>33</b>	<b>33</b>	<b>47</b>	<b>43</b>	<b>34</b>	<b>62</b>	<b>62</b>

**Civil Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	16	19	21	21	24	25	25	25	25	25	30	29	16
<b>New Cases</b>	3	2	2	3	1	2	2	0	0	5	1	2	23
<b>Judgments</b>	0	0	2	0	0	2	2	0	0	0	2	3	11
<b>Total Pending</b>	<b>19</b>	<b>21</b>	<b>21</b>	<b>24</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>25</b>	<b>30</b>	<b>29</b>	<b>28</b>	<b>28</b>

**Table I – Case statistics from Suai District Court for 2016****Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	347 <sup>77</sup>	357	424	416	465	509	543	556	557	589	603	622	347
<b>New Cases</b>	22	81	9	54	52	53	28	1	43	32	35	17	427
<b>Judgments</b>	12	14	17	5	8	19	15	0	11	18	16	5	140
<b>Total Pending</b>	<b>357</b>	<b>424</b>	<b>416</b>	<b>465</b>	<b>509</b>	<b>543</b>	<b>556</b>	<b>557</b>	<b>589</b>	<b>603</b>	<b>622</b>	<b>634</b>	<b>634</b>

<sup>76</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector', (April 2016), page 56, JSMP said that there were 16 pending cases in December 2015. This figure was incorrect, as the Oe-Cusse District Court did not include 9 pending cases, and the actual total of pending cases as at 31 December 2015 was 25.

<sup>77</sup> JSMP notes that in its report, '2015 Overview of the Justice Sector' (April 2016) on page 57 it is said that the total pending cases for Suai District Court was 147. This figure was incorrect, and the correct number of pending cases for December 2015 is 347.

### Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2015</b>	124	125	128	130	135	136	136	136	136	137	146	146	124
<b>New Cases</b>	1	3	5	6	2	2	0	0	1	10	0	0	30
<b>Judgments</b>	0	0	3	1	1	2	0	0	0	1	0	0	8
<b>Total Pending</b>	<b>125</b>	<b>128</b>	<b>130</b>	<b>135</b>	<b>136</b>	<b>136</b>	<b>136</b>	<b>136</b>	<b>137</b>	<b>146</b>	<b>146</b>	<b>146</b>	<b>146</b>



## ANNEX B – CORRUPTION CASES THAT JSMP MONITORED TO DECISION IN 2016

Type of case	Case No.	Defendant(s)	Chronology	Decision
<b>Dili District Court</b>				
Intentional mismanagement & Economic involvement in business (Articles 274 & 299 PC)	1212/12.PDDIL	Emília Pires (EP) & Madalena Hanjam (MH)	<p>The Public Prosecutor alleged that in 2012 the defendant, MH (former Vice-Minister of Health), sent a request to the Prime Minister to approve contingency funds to the Ministry of Health in the total of \$1.3 million. The money was requested to purchase over 80 new beds for the Guido Valdares National Hospital (HNGV), on the basis there was a lack of beds for patients.</p> <p>The defendant, MH, then sent another request asking the Prime Minister to conduct a single source procurement for the project to purchase beds from the husband of the defendant, EP (former Minister of Finance).</p> <p>After the Prime Minister had approved the contingency funds, it is alleged that the defendant, EP, opened a bank account to allow her husband access to the money to purchase the beds in Australia.</p> <p>The Public Prosecutor also alleges that the defendants met to prepare the procurement process for the purchase of the beds, including the selection of single source procurement.</p> <p>The defendants were charged with intentional mismanagement of public funds (Article 274) and economic involvement in business (Article 299).</p>	<p>Emília Pires: Prison sentence of 7 years and ordered to pay court costs of \$100.</p> <p>Madalena Hanjam: Prison sentence of 4 years and ordered to pay court costs of \$100.</p>
Economic involvement in business & Forgery of documents or technical report (Articles 299 & 303 PC)	0160/12.PDDIL	Gil Sarmiento da Costa (GSC), Antonio da Silva Araujo (ASA) & Jose Maria Soares (JMS)	<p>The Public Prosecutor alleged that on 6 October 2011, the State Security Secretary contracted the company Gifani Unipessoal Lda to provide uniforms to cadets of the national fire-brigade at the National Directorate of Civil Protection. The total cost for the uniforms was to be \$20,675.</p> <p>On 15 December 2011, the defendant JMS, the owner of Gifani Unipessoal Lda, delivered the uniforms to GSC, a civil servant at the National Directorate of Civil Protection and the cousin of JMS. The defendant, JMS, prepared and signed a delivery order and certificate that the company had provided the uniforms following the specifications annexed to the contract.</p>	<p>Gil Sarmiento da Costa: Prison sentence of 1 year, suspended for 2 years.</p> <p>Antonio da Silva Araujo: Prison sentence of 1 year, suspended for 2 years.</p> <p>Jose Maria Soares: Acquitted.</p>

Type of case	Case No.	Defendant(s)	Chronology	Decision
			<p>On 23 December 2011, the defendants, GSC and ASA (inspection team) proceeded to act as if inspecting the uniforms provided by Gifani Unipessoal Lda to check they were of good condition.</p> <p>But in reality the two defendants, GSC and ASA, knew that the uniforms were not in accordance with the contract. Despite this, the defendants said the uniforms were in accordance with the contract and requested the authorisation of payment to Gifani Unipessoal Lda of the \$20,675.</p> <p>Based on the payment request of the two defendants, GSC and ASA, the State processed payment to Gifani Unipessoal Lda for the total \$20,675.</p> <p>The defendants were charged with Economic involvement in business (Article 299) and Forgery of documents or technical report (Article 303).</p>	
Embezzlement (Article 295 PC)	0022/15.DEMER	Alvaro de Deus Lopes	<p>The Public Prosecutor alleged that on 12 December 2015, the defendant, the Administrative Secretary (Seketáriu Administratór) for the sub-district of Astabe, withdrew \$2,655.00 of State money. This money was to be used to pay the salaries of the village chiefs, sub-village chiefs and other officials. When questioned by police, the defendant said he took the money because he had personal expenses he needed to pay urgently.</p> <p>The defendant was charged with embezzlement (Article 295).</p>	Prison sentence of 3 years, suspended for 3 years and ordered to pay back \$2,655.00 over two years.
Misappropriation of public assets (Article 296 PC)	0969/12.PDDIL	Clarinha Nheu Alves	<p>The Public Prosecutor accused that in July 2012, the defendant, a former Member of Parliament, used a National Parliament vehicle to attend and participate in another political party's campaign.</p> <p>The Public Prosecutor charged the defendant with misappropriation of public assets (Article 296).</p>	Prison sentence of 2 years
Intentional mismanagement, Embezzlement & Forgery of documents or technical report (Articles 274, 295 & 303 PC)	0621/14.PDDIL	João Bosco Correia	<p>The Public Prosecutor alleged that on 19 March 2014, the defendant presented a proposal to the Director General of the Ministry of Education on having a national seminar in Dili with a budget of \$7,020. The proposal and budget were approved on 10 April 2014.</p> <p>The approved budget was to pay for renting a venue for the seminar along with snacks and lunch for participants. However, the defendant diverted some of the approved money to pay for expenses of an alternate program without obtaining approval and forged documents.</p>	Prison sentence of 3 years, suspended for 3 years and ordered to pay \$3,399 in compensation to the State and court costs of \$30.

Type of case	Case No.	Defendant(s)	Chronology	Decision
			The defendant was charged with intentional mismanagement (Article 274), embezzlement (Article 295) and forgery of documents or technical report (Article 303).	
Embezzlement, Aggravated forgery & Mismanagement of public funds (Articles 295, 304 & 319 PC)	0023/15.PGGCC	Gilermينو Antonio (GAG) Gomes & Raimundo Pinto (RP)	<p>The Public Prosecutor alleged that in November 2014, the defendant, GAG (a financial official with the Ministry of Agriculture and Fisheries), &amp; the defendant, RP (a technical official with the Ministry) engaged in corruption.</p> <p>The Ministry of Agriculture and Fisheries allocated a budget of \$50,000 towards the farming of fish in Sakato in Oe-Cusse District and Loes in the Liquiça District.</p> <p>The defendants forged a number of documents so to embezzle money from the allocated budget. In particular, they would prepare requests for staff travel to either Oe-Cusse or Liquiça Districts for more than days than the staff member visited. The defendants then took the money authorised for the staff travel.</p> <p>The defendants were charged with embezzlement (Article 295), aggravated forgery (Article 304) and Mismanagement of public funds (Article 319).</p>	<p>Gilermينو Antonio Gomes: Prison sentence of 6 years and ordered to pay, with the other defendant, \$49,920 in compensation to the State and court costs of \$20.</p> <p>Raimundo Pinto: Prison sentence of 7 years ordered to pay, with the other defendant, \$49,920 in compensation to the State and court costs of \$20.</p>
<b>Oe-Cusse District Court</b>				
Passive corruption for a lawful act & Active corruption (Articles 293 & 294 PC)	200/Krime/2015/TDO	Anselmos Colo (AC) & João Sasi (JS)	<p>The Public Prosecutor alleged that in 2012 the defendant AC, the village chief of Nipani, submitted the name of the other defendant, JS, to the Ministry of Social Solidarity to receive humanitarian support, including building materials, because he was a victim of a natural disaster. The defendant JS promised the defendant AC that he would distribute the goods received. The defendant, JS, received a large quantity of building materials; some of which he gave to the other defendant, AC.</p> <p>The defendants were charged with passive corruption for a lawful act (Article 293) and active corruption (Article 294).</p>	<p>Anselmos Colo: prison sentence of 1 year, suspended for 1 year and ordered to pay courts costs of \$20.</p> <p>João Sasi: prison sentence of 6 months, suspended for 1 year.</p>
Embezzlement (Article 295 PC)	168/Krime/2015/TDO	Jose Oqui	The Public Prosecutor alleged that on 20 July 2009 at the Ministry of Agriculture and Fisheries in Oe-Cusse the defendant received a proposal about renewing the construction of fish farming in Sakato. The budget for the proposal was \$28,576.	Prison sentence of 3 years, suspended for 3 years and ordered to pay courts costs of \$40

Type of case	Case No.	Defendant(s)	Chronology	Decision
			<p>At this stage, the defendant was the director of the Ministry in Oe-Cusse and so forwarded the proposal to the national office of the Ministry. On 12 August 2009, the national Ministry of Agriculture and Fisheries approved the proposal to the construction of fish farming and transferred \$10,000 for the project.</p> <p>The defendant then embezzled \$9,335 of this money for his own personal expenses. However, in 2015 the defendant repaid to the State the \$9,335 he had embezzled.</p> <p>The defendant was initially charged with embezzlement (Article 295) and the forgery of documents or technical report (Article 303). However, at trial the court amended the charge against the defendant to embezzlement (Article 295) only.</p>	
Passive corruption for a lawful act (Article 293)	0003/16.PDOEC	Beneditu Taek (BT), Lorenzo Tefa (LT) & Mateus Eli (ME)	<p>The Public Prosecutor alleged that in February 2015, the defendant BT, sent the other defendants, LT and ME, to elderly homeowners and try to convince them to give the defendants \$15. The defendants told the homeowners that if they paid the money then they would be registered for a pension like scheme, which they would start receiving money from in June 2015.</p> <p>Approximately 25 homeowners gave the defendants \$15 each making a total of \$375.</p> <p>When in June 2015 the homeowners did not start receiving their pensions, they made contact with the defendants and requested their money be returned. However, the defendants refused.</p> <p>The defendants were charged with passive corruption for a lawful act (Article 293).</p>	<p>Beneditu Taek: Prison sentence of 6 months, suspended for 1 year and ordered to pay court costs of \$20</p> <p>Lorenzo Tefa: Admonishment</p> <p>Mateus Eli: Admonishment</p>
<b>Suai District Court</b>				
Misappropriation of public assets (Article 296 PC)	131/PEN/15/TDS	Mario de Araujo Magno	<p>The Public Prosecutor alleged that in December 2012 the defendant, an employee of the Ministry of Agriculture &amp; Fisheries, used a State vehicle to transport party members of the Democratic Party to attend political campaign. When organising to use the State vehicle, the defendant had said he required the vehicle to carry out work related to the Ministry.</p> <p>The defendant was charged with misappropriation of public assets (Article 296)</p>	Acquitted



# **“Working to guarantee justice for everyone”**

## **JSMP’s vision**

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

## **JSMP’s mission**

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

- Monitoring
- Legal education, and
- Advocacy.