



USAID
FROM THE AMERICAN PEOPLE



COUNTERPART
INTERNATIONAL



The application of alternative sentences in cases of domestic violence at the Oecusse District Court

November 2015



This report was produced with the generous support of the American people through the United States Agency for International Development(USAID) in accordance with the terms set out in Cooperative Agreement NumberAID-486-A-13-00007 for the '*Ba Distrito*' Program in Timor-Leste which is implemented by international counterparts and their partners.The contents and opinions expressed in this report are those of the Judicial System Monitoring Programme (JSMP), and do not represent the vision of USAIDor the United States Government.



"Working to guarantee justice for everyone"

JSMP's vision

A democratic society that guarantees justice and human rights for everyone

JSMP's mission

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

- monitoring
- legal education, and
- advocacy



www.jsmp.tl

info@jsmp.minihb.org

www.facebook.com/timorleste.jsmp

3323883

Table of Contents

1. Introduction.....	7
2. Data on sentencing trends in domestic violence cases	9
<i>The Oecusse District Court.....</i>	<i>9</i>
<i>Comparisons between the four jurisdictions.....</i>	<i>11</i>
3. Sentencing principles and requirements in the Penal Code.....	13
<i>Suspended prison sentences.....</i>	<i>13</i>
<i>Substituting a prison sentence with a fine.....</i>	<i>14</i>
<i>Additional penalties in the Law Against Domestic Violence</i>	<i>15</i>
<i>Civil compensation & maintenance for victims of domestic violence</i>	<i>15</i>
4. Complexity of sentencing in the context of domestic violence.....	16
<i>Economic factors.....</i>	<i>16</i>
<i>Relevant parties' opinions about fines.....</i>	<i>17</i>
<i>Prevention of reoccurrence of crimes</i>	<i>18</i>
<i>Guarantee of security for the victim</i>	<i>19</i>
5. Conclusions and Recommendations	21

Executive Summary

This report is based on data from JSMP's monitoring activities in all four district courts between March 2014 and September 2015 (19 months in total). This report focuses on statistics from the Oecusse District court as a case study to examine broader sentencing patterns in all cases of domestic violence during the aforementioned period. This report continues JSMP's analysis of the prosecution, sentencing and execution of sentences in cases of domestic violence through our thematic report: *'Law Against Domestic Violence: Obstacles to implementation three years on'* (hereafter: '2013 LADV Report').

The 2013 LADV Report showed that, since the promulgation of the LADV (Law No.7/2010) in July 2010, there has been a dramatic increase in the number of domestic violence cases reaching the courts. Between July 2010 and June 2013, JSMP monitored 352 cases of domestic violence in the four district courts. Most of these cases involved female victims (94% of all cases) and male perpetrators, and a majority resulted in suspended sentences pursuant to Article 68 of the Penal Code (52%) or fines pursuant to Article 67 of the Penal Code (24%).

Recent data from JSMP monitoring shows that this trend is continuing. Cases of domestic violence remain the single largest category of cases monitored by JSMP. Between March 2014 and September 2015, from the total of 257 cases monitored by JSMP at the Oecusse District Court, 151 were domestic violence cases. From these 151 cases, only 9% involved female defendants and, in relation to sentencing, 53% resulted in suspended sentences and 36% resulted in fines. JSMP observed the same trend in the other district courts, with some minor differences.

Based on JSMP's observations and court monitoring statistics, and analysis of the Penal Code and the LADV, the sentencing process is made more difficult because of the complex and multidimensional character of domestic violence. Courts need to consider all of the circumstances, including sentencing principles, the specific requirements for each type of sentence, and the unique facts of each case. JSMP greatly appreciates the work of the courts in processing cases of domestic violence that have been registered in the formal justice system. However, JSMP believes that the courts have not yet found a proper balance between the above factors, especially when considering the aims of preventing violence and guaranteeing the security of victims.

JSMP makes the following recommendations to support the work of the courts when determining sentences in cases of domestic violence:

Recommendations:

1. Develop sentencing guidelines for cases of domestic violence to help judges determine the appropriate penalty in each case. These guidelines should adhere to the principles and requirements set out in the Penal Code and the LADV, and respond to the complexity of sentencing in the context of domestic violence.
2. The courts should consider the circumstances of the victim before handing down fines in cases of domestic violence, to ensure they do not impose fines if such a penalty would cause financial difficulties for the victim and/or their children.
3. The courts should consider additional or auxiliary orders when substituting prison sentences with a suspended sentence or a fine. Additional orders could include requiring the convicted person to:
 - a. periodically appear before a court, social reintegration officer or non-police entity during the duration of the suspension – Article 70(1)(g) of the Penal Code;
 - b. be monitored by social reintegration services for the duration of the suspension, and to adhere to a social reintegration plan – Article 71 of the Penal Code;
 - c. undergo treatment (or the court can require that follow-up support services be provided to the victim) – Article 38(1) of the LADV;
 - d. have no contact with the victim for a maximum period of 3 years, if this is necessary to prevent a repetition of violence – Article 38(2) of the LADV;
 - e. pay maintenance to the victim – Article 29 of the LADV.
4. The courts should consider other orders to protect the security of victims while cases are being processed, including orders to remove the defendant from the family residence – Article 37 of the LADV.
5. The Government and relevant ministries, including the Ministry of Social Solidarity and the Ministry of Justice, should develop sound infrastructure to execute the aforementioned additional orders.

1. Introduction

This report is based on data from JSMP's monitoring activities in all four district courts between March 2014 and September 2015 (19 months in total). This report focuses on statistics from the Oecusse District court as a case study to examine broader sentencing patterns in all cases of domestic violence during the aforementioned period. This report continues JSMP's analysis of the prosecution, sentencing and execution of sentences in cases of domestic violence through our thematic report: *'Law Against Domestic Violence: Obstacles to implementation three years on'* (hereafter: '2013 LADV Report').¹

The 2013 LADV Report showed that, since the promulgation of the LADV (Law No. 7/2010) in July 2010, there has been a dramatic increase in the number of domestic violence cases reaching the courts. Between July 2010 and June 2013, JSMP monitored 352 cases of domestic violence in the four district courts. Most of these cases involved female victims (94% of all cases) and male perpetrators,² and a majority resulted in suspended sentences pursuant to Article 68 of the Penal Code (52%) or fines pursuant to Article 67 of the Penal Code (24%).³

Recent data from JSMP monitoring shows that this trend is continuing. Cases of domestic violence remain the single largest category of cases monitored by JSMP.⁴ Between March 2014 and September 2015, from the total of 257 cases monitored by JSMP at the Oecusse District Court, 151 were domestic violence cases. From these 151 cases, only 9% involved female defendants and, in relation to sentencing, 53% resulted in suspended sentences and 36% resulted in fines. JSMP observed the same trend in the other district courts, with some minor differences.

These statistics show that the LADV continues to have a significant impact. The LADV makes all crimes of domestic violence public crimes, meaning that police and the Public Prosecution Service must investigate the crime and, unless there is insufficient evidence, must prepare an indictment. Also, when crimes of domestic violence reach the courts, the court cannot mediate the case or validate a settlement. These statistics also show that the promulgation of the LADV is not enough to end domestic violence. Domestic violence will continue to occur if there is a lack of coordinated effort from all actors, including the courts and prosecutors.

¹ JSMP, 'Law Against Domestic Violence: Three years of implementation and obstacles' (October 2013): <www.jsmp.tl>

² Ibid, page 11.

³ Ibid, page 17.

⁴ JSMP has attended trials and documented information from the trial process from the start through to final decision. However, JSMP did not attend all of them because in some cases JSMP was unable to continue monitoring through to the final decision due to human resource issues and other institutional commitments.

The courts and judges play an important role in this context, because they are given the power to make decisions in cases of domestic violence based on the principles set out in the Penal Code (Decree Law No.1). Trials and sentencing can achieve a range of objectives, including: ensuring the security of victims; punishing perpetrators; deterring perpetrators from committing similar acts in the future; deterring the community in general from criminal acts; and facilitating the rehabilitation and reintegration of perpetrators into the community. These sentencing principles need to act as guidelines for the courts when they make decisions, and need to be clearly explained to both defendants and victims. In addition, the Penal Code defines specific requirements for the courts to consider when imposing a range of sentences. When the courts substitute prison sentences with a suspension or fine, it is particularly important to consider the requirements in the Penal Code, as well as sentencing principles and the unique circumstances of each case.

2. Data on sentencing trends in domestic violence cases

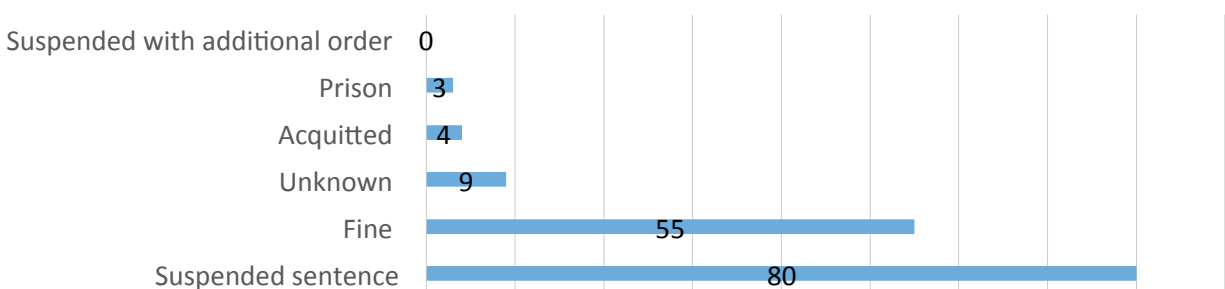
The Oecusse District Court

Cases of domestic violence continue to represent the single highest category of crimes that are monitored by JSMP in the courts. Between March 2014 – September 2015 JSMP monitored 151 cases of domestic violence at the Oecusse District Court from a total of 257 cases monitored by JSMP. This means cases of domestic violence represent 59% of the total number of cases that were monitored by JSMP at the Oecusse District Court during the 19 month period. JSMP believes these statistics show that the community is starting to understand that domestic violence is a public crime and how to process their cases through the formal justice system. In addition, this trend shows that victims of domestic violence are gaining confidence in the formal justice system and the courts.

From all of the cases of domestic violence monitored by JSMP at the Oecusse District court, only 9% involve female defendants. This shows that domestic violence is a form of gender based violence. It is also important to emphasize that all of the 151 cases of domestic violence were charged as simple offences against physical integrity, characterized as domestic violence, pursuant to Article 145 of the Penal Code.

In relation to sentencing, 53% of the total number of cases of domestic violence monitored by JSMP at the Oecusse District Court resulted in suspended sentences, and 36% of the cases resulted in fines. It is important to note that during this period, based on JSMP's monitoring, the Oecusse District Court did not apply civil compensation in any cases of domestic violence. JSMP has not yet monitored any cases where the Oecusse District court ordered a defendant to attend counseling, or follow-up support services for the victim, pursuant to Article 38 of the LADV. This is significant as JSMP has observed that, until now, the courts have rarely imposed many additional orders or auxiliary orders of this kind.

Graph 1: The types of sentences in cases of domestic violence, Oecusse District Court March 2014 - September 2015

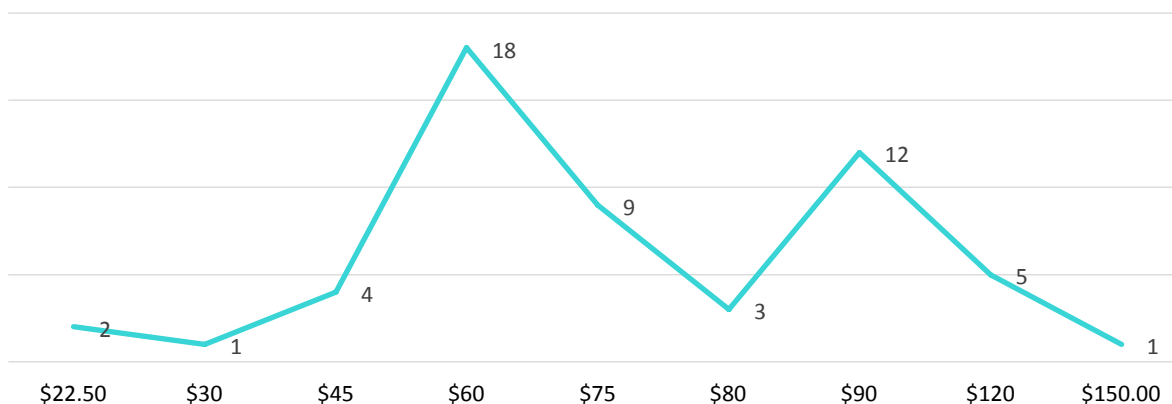


From the 55 cases in which the Oecusse District Court imposed a fine against the defendant, the amount varied from US\$22.50 to US\$150.00 with most fines between US \$60.00 and US\$90.00. The amounts of the fines imposed were substantial in comparison to the average income in Timor-Leste. Normally, the court will allow a defendant to pay a fine in installments, for example the convicted person may pay one dollar everyday for 30 days. When the court imposes a fine, it can also apply a prison sentence as an alternative if the defendant does not pay the fine within the timeframe set by the court.

Example Case 1:

In 2014, the Oe-Cusse District Court ordered a defendant to pay a fine of US \$120.00 after he was found guilty of committing the crime of simple offences against physical integrity characterized as domestic violence. The court ordered the defendant to pay US \$1.00 for 120 days. If he does not pay the fine, he needs to go to prison for 80 days.⁵

Graph 2: The amounts of fines imposed in cases of domestic violence, Oecusse District Court March 2014 - September 2015



The District Courts of Dili, Baucau and Suai⁶

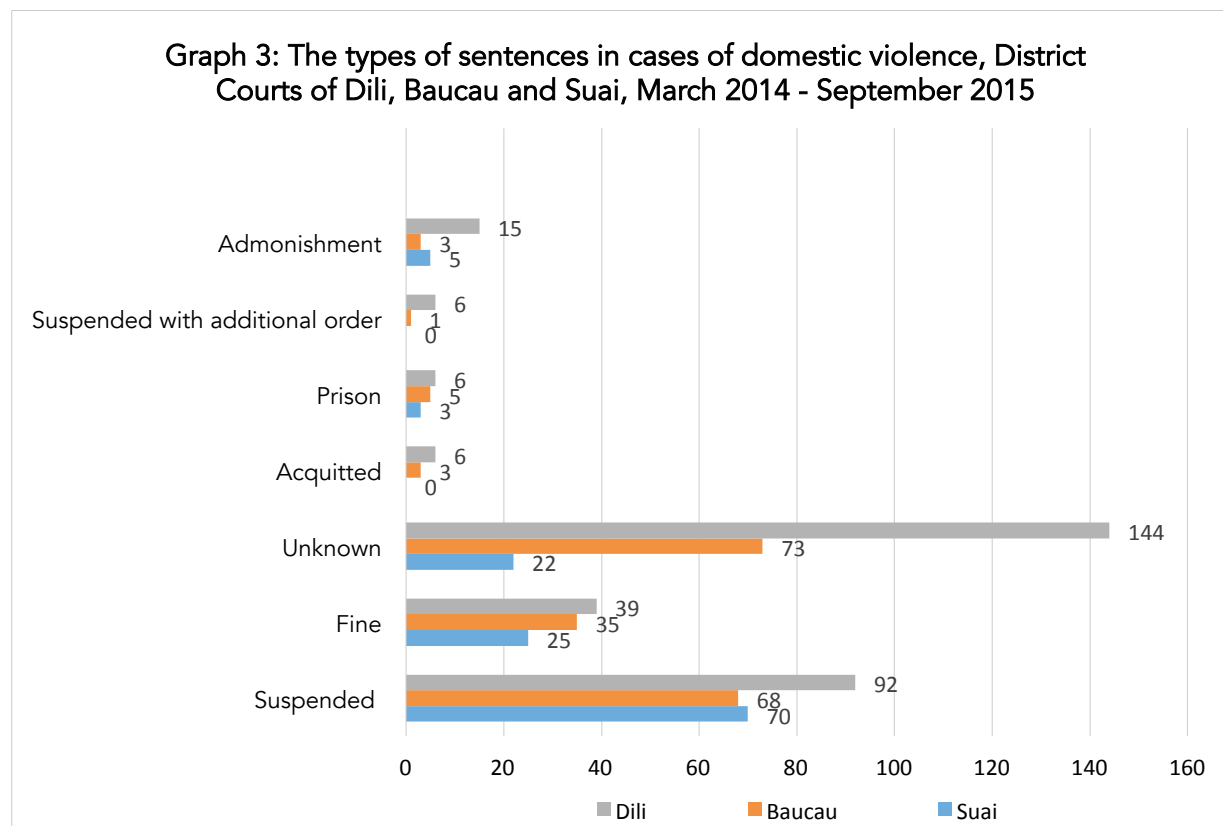
In the other district courts, suspended sentences or fines continue to be imposed in most cases of domestic violence. Between March 2014 – September 2015 JSMP monitored 621 cases of domestic violence at the Dili, Baucau and Suaidistrict courts. From these cases, a total of 230 resulted in suspended sentences, which represents 37% of the total number of domestic

⁵JSMP, “Summary of the Trial Process at the Oecusse District Court”, March 2014; Case No. 33/crime/2014/TDO: <<http://jsmp.tl/wp-content/uploads/2014/01/sumariu-kazu-TDO-marsu.pdf>>

⁶JSMP would like to extend its appreciation to the donors who have provided support for our court monitoring in the districts of Dili, Baucau and Suai. The donors are The Asia Foundation and the Embassy of Norway (NOREM).

violence cases monitored at these three courts. If the cases that JSMP was unable to monitor to a final decision (239 cases) are excluded, then suspended sentences represent 60% of the total number of domestic violence cases monitored by JSMP at the three district courts.

Fines represented 16% of the total number of domestic violence cases monitored by JSMP at the three district courts. If the cases that were not monitored to completion are excluded, then fines represented 26% of the total number of domestic violence cases monitored by JSMP at these three district courts.



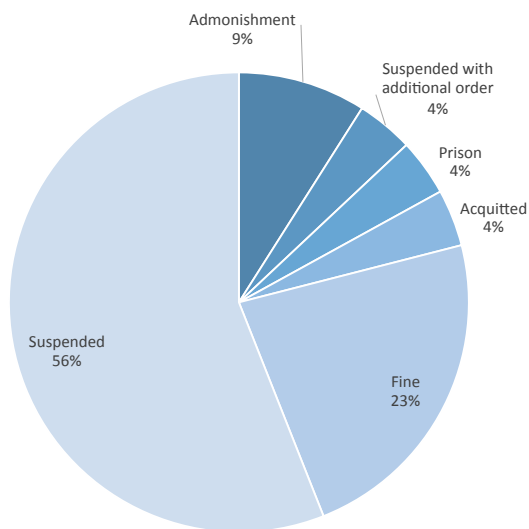
Comparisons between the four jurisdictions

Data from JSMP monitoring in all of the jurisdictions shows that the trends in sentencing that were observed in the 2013 LADV Report are ongoing. All courts continue to impose suspended prison sentences in a majority of domestic violence cases and apply fines in many cases. There are only a small number of cases that result in suspensions with an additional order or auxiliary order, but we hope that decisions like this will increase in the future.

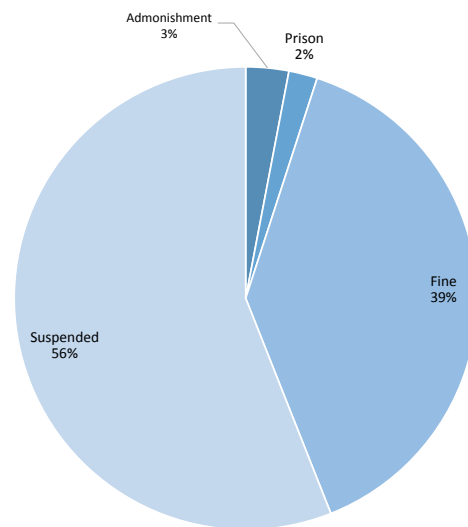
It is evident from the data below that there are significant differences between the four jurisdictions, but it can generally be said that the Oecusse District Court favors fines and the Suai District Court prefers to apply suspended prison sentences in cases of domestic violence.

Graph 4: The types of sentences in cases of domestic violence that were monitored by JSMP until a final decision was handed down, All of the Courts, March 2014 – September 2015

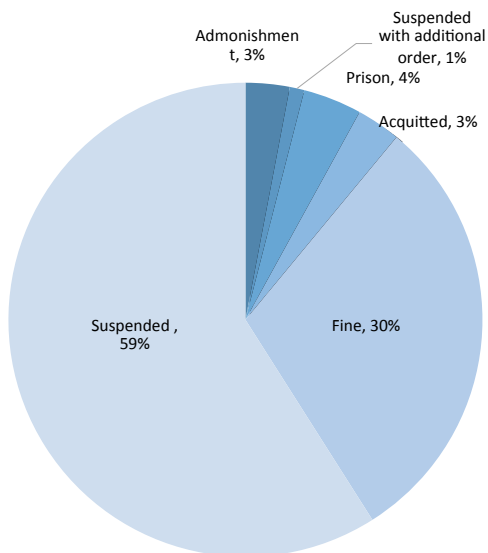
DILI DISTRICT COURT



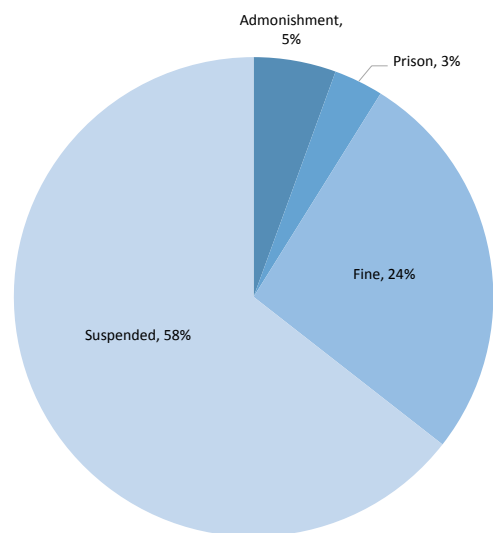
THE OECUSSE DISTRICT COURT



BAUCAU DISTRICT COURT



THE SUAI DISTRICT COURT



3. Sentencing principles and requirements in the Penal Code

The Penal Code has set out principles to act as guidelines when the courts apply a penalty. The Penal Code refers to the principles of “need”, “proportionality”, “suitability” and “reintegrating perpetrators in society”.⁷ According to Article 51(1) of the Penal Code, the measure of the penalty needs to take into consideration the perpetrator’s guilt and prevention requirements. The trial and sentencing process seeks to achieve a range of objectives that can be deduced from the text of the Penal Code, including:

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

These sentencing principles need to act as guidelines for the courts when they make decisions, and need to be clearly explained to defendants and victims.

When the courts substitute a prison sentence with a suspension or fine, it is important to consider sentencing principles, the specific requirements outlined in the Penal Code and the unique circumstances of each case. In cases of domestic violence, Article 38 of the LADV also applies when the court considers a fine as an alternative penalty.

Suspended prison sentences

Pursuant to Article 68 of the Penal Code, the court can suspend a prison sentence which does not exceed three years. The court must provide grounds for suspending the prison sentence, namely:

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

⁷Refer to the annex of the Penal Code.

As a condition on a suspended prison sentence, the Court can impose additional orders or auxiliary orders pursuant to the Penal Code, including requiring the convicted person to:

- make or ensure reparation of the damage caused by the crime within a given deadline – Article 69(2)(a);
- make a public apology - Article 69(2)(b);
- periodically appear before a court, social reintegration officer or non-police entity during the period of suspension – Article 70(1)(g); and/or
- be monitored by social reintegration services for the duration of the suspension, and adhere to a social reintegration plan – Article 71.

If, during the period of suspension, the convicted person commits another crime and is convicted by the court, or violates an additional order imposed by the court, then the court can revoke the suspension.⁸ This means that the convicted person must serve the prison sentence that was suspended, as well as the penalty imposed for any new crime committed. If the convicted person commits a crime of intent which is punishable with a prison sentence, the court must revoke the original suspension.⁹

Substituting a prison sentence with a fine

Pursuant to Article 67 of the Penal Code, the Court can substitute a prison sentence not exceeding 12 months with a fine, “whenever the requirement for preventing future crimes does not require that said prison sentence be served”. A fine is an amount of money that a convicted person must pay to the State. Pursuant to Article 75 of the Penal Code, the minimum fine is US \$5.00 (five dollars) and the maximum fine is US \$72,000.00 (seventy two thousand dollars).¹⁰ The court shall determine the amount based on the economic circumstances of the convicted person.

In cases of domestic violence, the court needs to also consider Article 38 of the LADV. Article 38 states that the Court may substitute a prison sentence with a fine provided that the following prerequisites have been met:

- the security of the victim is guaranteed;
- the convicted person is required to undergo treatment or follow-up support services are provided to the victim; and
- it would benefit the preservation of the family unit.

⁸ Article 73(1) of the Penal Code.

⁹ Article 73(2) of the Penal Code.

¹⁰ The same calculations: a minimum of \$0.50 x 10 days and maximum of \$200.00 x 360 days.

Additional penalties in the Law Against Domestic Violence

Pursuant to Article 38(2) of the LADV, the court may impose an additional penalty prohibiting contact with the victim for a maximum period of 3 years, if it is considered necessary to prevent the repetition of violence.

Also, Article 37 of the LADV gives the court the power to order the perpetrator to be removed from the family residence if there are signs of aggression that make it reasonably foreseeable that the violence could continue and "creates danger to the life or the physical, psychological or sexual integrity of the victim".

Civil compensation & maintenance for victims of domestic violence

Pursuant to Article 104(1) of the Penal Code, the court must assess and quantify civil compensation for losses and damage resulting from a crime upon request from the victim, who is represented by the Public Prosecution Service. The court can determine the amount of compensation to be given to the victim based on an assessment of the amount of loss or damage caused by the perpetrator's crime. The Civil Code contains general principles about civil liability. In addition to compensation for death or physical injury, the court can also consider serious "non-material damage" pursuant to Article 430 of the Civil Code.

In cases of domestic violence, the court can also order a perpetrator to pay maintenance to the victim. The relevant provisions are Articles 29, 30, and 31 of the LADV. The court must establish the amount of maintenance to be paid to the victim, or the parties can establish a mutual agreement, with consideration of the victim's needs and the income of the perpetrator. In cases of domestic violence the court can also order a perpetrator to pay provisional maintenance to the victim. The court can impose this order based on its own decision pursuant to Article 32 of the LADV. When the defendant does not have the economic means to pay provisional maintenance, the court can refer the order to the Ministry of Social Solidarity to provide social security support.

4. Complexity of sentencing in the context of domestic violence

Part 3 of this report (sentencing principles and specific requirements in the Penal Code) which sets out the complex sentencing process and the range of factors the court needs to consider when making decisions on an appropriate sentence in each case. JSMP suggests that this sentencing process is made more difficult in domestic violence cases due to the complex and multidimensional nature of domestic violence.

Domestic violence is a form of control and the product of gender inequality and norms surrounding the roles of men and women in society. There are other factors that can contribute to the incidence of domestic violence, such as alcohol and tension arising from financial issues, but these factors are never the cause of domestic violence.

We also understand from international research and the experiences of women in Timor-Leste that domestic violence is ongoing and may continue for a long time before a victim is able to contact the police or seek assistance from another person. When cases of domestic violence are brought before the court, it is likely that this is not the first time that a defendant has committed violence against the victim. This means it is difficult for the court to change the behavior of the defendant through sentencing, and even more so to guarantee the security of the victim.

Economic factors

From JSMP monitoring at the Oecusse District court, economic factors can be seen as factors that contribute to the incidence of domestic violence. In some cases, the victim can be subjected to economic violence together with physical violence. For example, in one case a defendant said he hit his wife because the victim used US \$20 without his approval.¹¹ In this case, it is clear that the defendant wanted to control money in the home and used physical violence as a form of such control. In another case monitored by JSMP, it was clear that the poor economic situation of the family was causing tension and this contributed to the occurrence of domestic violence.

In this context, JSMP is concerned with the application of fines without more careful consideration of the victim's circumstances in each case. JSMP recommends that the court needs to be careful when considering the substitution of a prison sentence with a fine if the

¹¹ Case No.84/crime/2014/TDO.

fine could cause financial difficulties for the victim or the victim's children. In most cases of domestic violence, the victim continues to live together with the perpetrator and therefore a fine can have a negative impact. This can deter victims from making any further complaints to the court.

Recommendations from the United Nations about fines in cases of domestic violence are that legislation should prescribe that:

- *fines should **not** be imposed in cases of domestic violence if such a penalty will cause financial difficulties for the victim and/or the victim's children; and*
- *If a fine is to be imposed, it should be imposed with treatment and monitoring of the perpetrator during the period of conditional release.¹²*

Research carried out by The Asia Foundation in 2014 about the economic dimensions of domestic violence in Timor-Leste also shows that this situation is very complex.¹³ This research showed that even though many believe women to be economically dependent on their husbands, they can also generate substantial income for their families, but they often need access to land and a home to do so. If they need to leave the home because they have suffered domestic violence, this can have a negative impact on their economic situation. This research included interviews with 18 women who suffered domestic violence, including nine who were separated from their husbands. Of these nine women, six of them believed that their economic situation improved after they separated from their husbands.¹⁴

Relevant parties' opinions about fines

JSMP sought the views of three victims of domestic violence who had recently had their cases heard in the Oecusse District court.¹⁵ The victims said that fines create difficulties for the family's financial situation, and they were not happy with the imposition of fines in their cases. They were happy, however, that their husbands did not go to prison. One victim said: "I cannot buy clothes or rice for us and the children because any money we get must be used to pay the court." Another victim said she needs to help her husband earn money to pay the court.

¹²United Nations Department of Economic and Social Affairs, "Handbook for Legislation on Violence against Women", New York (2010).

¹³ The Asia Foundation, "Beyond Fragility & Inequity: Women's Experiences of the Economic Dimensions of Domestic Violence in Timor-Leste" (July 2015).

¹⁴ Ibid, page 87-88.

¹⁵ JSMP interviews with three victims on 24/08/2015 and 25/10/2015. JSMP was unable to interview many victims due to considerations about their security and difficulties contacting them.

JSMP also interviewed four convicted persons who recently had fines imposed against them by the Oecusse District court.¹⁶ They all agreed that, although the fines placed a burden on them, they were also pleased they did not have to go to prison.

In 2013, a judge from Oecusse told JSMP that the court started applying fines in cases of domestic violence because convicted persons believed that suspended prison sentences meant they were free and had not been convicted.¹⁷ This continued to be a concern for the judicial actors. From the judge's perspective, the court must carefully consider the seriousness of each case and can then choose the most appropriate penalty.¹⁸ It is important that the court listens to the final recommendations of the Public Prosecution Service and the defence, and bases its sentence on these final recommendations. As a result, prosecutors and defenders also play a key role in sentencing.

When JSMP interviewed a representative from the Public Prosecution Service in the jurisdiction of Oecusse, he said that during the period of this report the Public Prosecution Service had never recommended that the court impose a fine.¹⁹ However, the Public Prosecution Service agreed with the court's view that all decisions must be based on the unique circumstances of each case, including any aggravating and mitigating circumstances. When JSMP interviewed two representatives from the Office of the Public Defender in the jurisdiction of Oecusse, they said that imposing a fine is fair on defendants because it did not remove their freedom.²⁰

Prevention of reoccurrence of crimes

It can be seen from Part 3 (sentencing principles and specific requirements in the Penal Code), that the two main objectives of the sentencing process are to ensure the security of victim, and to deter the perpetrator from committing similar acts in the future. JSMP questions if fines are actually effective in achieving these objectives, without an additional order, such as requiring the defendant to attend counseling and providing follow-up support services for the victim pursuant to Article 38 of the LADV. This is a major concern that is also relevant to suspended sentences.

¹⁶ JSMP interviews with four convicted persons on 29/10/2015, 30/10/2015 and 5/11/2015.

¹⁷ 2013 LADV Report, page 34-35.

¹⁸ JSMP interview with a judge from the jurisdiction of Oecusse on 12/05/2015.

¹⁹ JSMP interview with a representative from the Public Prosecution Service from the jurisdiction of Oecusse on 12/05/2015.

²⁰ JSMP interview with two representatives from the Office of the Public Defender on 13/05/2015.

Example Case 2:

In 2014, the Oecusse District Court sentenced a defendant to six months prison after he was found guilty of committing the crime of simple offences against physical integrity characterized as domestic violence against his wife.

The court proved that the defendant was drunk when he threw a rock at the back of the victim's head, which resulted in the victim suffering heavy bleeding and a head injury. Prior to this, the defendant had committed the same crime against his wife on two occasions and, on November 7 and December 4 2011, the court had ordered the defendant to pay fines of US \$30.00 and US \$90.00 respectively.²¹

JSMP praises the latter decision in this case because the court imposed a prison sentence against the defendant. It is clear from the history of this case that the perpetrator did not change his behavior even though the court had fined him twice for committing domestic violence against his wife. Therefore, the court decided that the imposition of another fine could not “guarantee the security of the victim” (Article 38 of the LADV).

JSMP believes that the courts need to impose heavier sentences in cases of domestic violence if there is proof that the defendant continues to commit the crime of domestic violence. This factor is included in the general aggravating circumstances in Article 52(2)(g) of the Penal Code: “not being a case of reoccurrence, the perpetrator has committed one or more crimes of a similar nature in the course of three years”. It is clear that if a perpetrator receives a fine, and then commits another crime of domestic violence in the course of 3 years from the time that sentence was handed down, the court must consider this as an aggravating circumstance. In addition, the court needs to consider if an alternative penalty like a fine or suspended sentence can prevent this perpetrator from recommitting the crime of domestic violence in the future.

Guarantee of security for the victim

JSMP believes that guaranteeing the security of the victim should be the most important factor when the court makes a decision in a case of domestic violence. If there is evidence that the perpetrator will continue to commit domestic violence and the victim is afraid of this possibility, the court must consider a sentence that can better protect the security of the victim.

²¹ JSMP Press Release, “Oecusse District Court sentences defendant in case of domestic violence to an effective prison sentence of six months” (7 April 2014): <<http://jsmp.tl/wp-content/uploads/2014/01/Tribunal-Distrital-Oe-Cusse-kondena-arguidu-ba-kazu-violencia-domestika-ho-pena-prizaun-efetiva-fulan-neen.pdf>>

Example Case 3:

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

During the trial the defendant confesses, and states that he regrets his actions, and that they have four children and only earn a small amount of money as farmers. The defendant also testified that he “has reconciled” with his wife. However, the victim testified that she is still afraid of the defendant and currently lives with her brother.

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

JSMP believes that in cases like the above, there is strong evidence that the victim fears for her security and the court should have also considered an additional penalty from the LADV, such as prohibiting the defendant from having contact with the victim or ordering the removal of the defendant from the family residence (Article 38(2) and Article 37 of the LADV). JSMP acknowledges the judges’ concerns that adequate infrastructure is not yet available to execute additional orders like these. JSMP continues to encourage judicial actors and the relevant ministries, such as the Ministry of Social Solidarity and Ministry of Justice, to find practical strategies so that accessory penalties from the LADV can be effectively executed.

²²JSMP, “Summary of the Trial Process at the Oecusse District Court” (June 2015); Case No. 42/Krime/2015/TDO: <<http://jsmp.tl/wp-content/uploads/2015/03/sk-Oe-Cusse-Junu-2015.pd> >

5. Conclusions and Recommendations

The 2013 LADV Report shows that since the promulgation of the LADV in July 2010, the number of cases of domestic violence reaching the courts has increased dramatically. Most cases of domestic violence monitored by JSMP during this period have involved women as victims and men as perpetrators. From the cases of domestic violence monitored by JSMP during this three year period, most cases resulted in suspended sentences pursuant to Article 68 of the Penal Code, or fines pursuant to Article 67 of the Penal Code.

Recent data from JSMP monitoring has shown that this trend is ongoing. Cases of domestic violence continue to represent the single highest category of crimes that have been monitored by JSMP in the courts. Between March 2014 – September 2015 JSMP monitored 151 cases of domestic violence at the Oecusse District Court from a total of 257 cases monitored by JSMP. In relation to sentencing, 53% of the total number of cases of domestic violence monitored by JSMP at the Oecusse District court resulted in suspended sentences, and 36% of the cases resulted in fines. JSMP observed the same trend in the other district courts with some minor differences.

JSMP believes that in cases of domestic violence, the sentencing process is made more difficult because domestic violence is multidimensional and very complex. The courts need to consider all of the circumstances, including sentencing principles, specific prerequisites for each type of sentence, and unique factors in each case. JSMP really appreciates the work of the courts to process cases of domestic violence that have been registered before the formal justice system, and makes some recommendations to support the work of the courts in sentencing.

Recommendations:

1. Develop sentencing guidelines for cases of domestic violence to help judges determine appropriate penalties in each case. These guidelines should adhere to the principles and requirements set out in the Penal Code and the Law Against Domestic Violence, and respond to the complexity of sentencing in the context of domestic violence.
2. The courts should consider the circumstances of victims before handing down fines in cases of domestic violence, so that they refrain from imposing fines if such a penalty will cause financial difficulties for the victim and/or their children.

3. The courts should consider additional or auxiliary orders when substituting prison sentences with a suspension or fine. Additional orders could include:
 - a. the convicted person needs to periodically appear before a court, social reintegration officer or non-police entity during the period of suspension – Article 70(1)(g) of the Penal Code;
 - b. the convicted person should be monitored by social reintegration services for the duration of the suspension, and needs to adhere to a social reintegration plan – Article 71 of the Penal Code;
 - c. the convicted person should undergo treatment or follow-up support services for should be provided to the victim – Article 38(1) of the Law Against Domestic Violence;
 - d. prohibiting the convicted person from having contact with the victim for a maximum period of 3 years, if this is necessary to prevent recurrence of violence – Article 38(2) of the Law Against Domestic Violence;
 - e. order the convicted person to pay maintenance to the victim – Article 29 of the Law Against Domestic Violence.
4. The courts should consider other orders to protect the security of victims while cases are being processed, including orders to remove the defendant from the family residence – Article 37 of the Law Against Domestic Violence.
5. The Government and relevant ministries, including the Ministry for Social Solidarity and Ministry of Justice, should develop sound infrastructure to execute the aforementioned additional orders.

THE APPLICATION OF ALTERNATIVE SENTENCES IN CASES OF DOMESTIC VIOLENCE AT THE OECUSSE DISTRICT COURT.

JSMP, November 2015

www.jsmp.tl
info@jsmp.minihb.org
[www.facebook.com/
timorleste.jsmp](http://www.facebook.com/timorleste.jsmp)

Telephone Number: 3323883