

2012 Overview of the Justice Sector

JSMP Annual Report



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Justice Facility
A Bilateral Co-operation between the
Governments
of Timor-Leste and Australia
2008-2013



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EXECUTIVE SUMMARY

After the 2006 crisis the government prioritized the development of the justice sector. The justice sector was included in the government's national plan and has remained a priority to date. During this period, JSMP has continued to monitor the justice sector and monitored cases in all courts to ensure the transparency and proper functioning of this sector.

In 2012, JSMP monitored 430 criminal cases and 9 civil cases. From these cases, JSMP has included in this report analysis of two important cases involving allegations of corruption against members of government – a corruption case involving the former Minister of Justice Lúcia Lobato and a civil servant, António Freitas de Araújo, and a case of alleged corruption involving the former Minister Arcângelo Leite and a civil servant, Bernardo Ornai. These two cases highlight both positive developments in the judicial process and aspects that still need to be improved.

JSMP continues to monitor the justice sector in general, such as human resources and the budget allocated to judicial institutions. JSMP acknowledges that in 2012 the justice sector achieved much progress, particularly in human resources which continues to improve annually. However, JSMP continues to be concerned with the budget allocated to each of the district courts and the facilities provided to the Office of the Public Defender, as well as other obstacles relating to the use of Portuguese in the justice sector.

In 2012, the government and the National Parliament also passed amendments to Law No. 11/2008 regarding Private Lawyers and their Training. These amendments increased the transitional period to the new regulatory regime for private lawyers. These amendments are very positive for the justice sector as it ensures that the community can continue to have access to legal assistance during the transitional period.

JSMP has also included in this report a section analysing the situation of gender equality in Timor-Leste. From JSMP monitoring activities and provision of legal aid for women and children in 2012, we observed that at the implementation level, the law still does not adequately protect and ensure gender equality in Timor-Leste. Women in Timor-Leste continue to experience violence and violation of their rights. However, JSMP also observed that the promulgation of the Law Against Domestic Violence in 2010 has strengthened the legal protection of women and provided them with a means to protect their right to live free from violence.

JSMP hopes that this *Overview of the Justice Sector 2012* will inform the public about our justice system and those aspects that need to be maintained and improved now and into the future. Through this report, JSMP has endeavoured to provide analysis and recommendations for all of the relevant institutions to review.

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

1. The panel of judges hearing an ordinary appeal should be of different composition to the panel hearing an extraordinary appeal in order to avoid questions of impartiality and conflict of interest.
2. The State should urgently establish a Supreme Court so that the Court of Appeal does not perform a dual role and to clearly separate the functions of the Court of Appeal and the Supreme Court.
3. The Public Defender's Office should have a comprehensive understanding of their role regarding the provision of legal assistance to defendants in need of state-funded legal assistance in accordance with their statute and not provide legal assistance to defendants who have sufficient financial means to engage a private lawyer.
4. Courts should make available all documents from every case, including written copies of the indictment and decisions, if the case is public in nature and the public has a legitimate interest as set out in article 75.1(c) and article 77.3 of the Criminal Procedure Code. This does not include

cases involving minors and those cases which are exceptions to the public nature of proceedings as set out in article 76.1 of the Criminal Procedure Code.

5. The court should properly archive all cases that have been processed.
6. The National Parliament must collaborate better with the courts to avoid impediments to legal proceedings involving members of the government or the National Parliament who have legal immunity.
7. The National Parliament and the government should consult each other regarding the drafting of laws or amending legislation to avoid confusing the public, for example in the case of the amendments to the Law on Private Lawyers and their Training.
8. The budget for each court should better reflect the reality of the conditions faced by each court.
9. The government must examine the condition of accommodation for court clerks in each district court to ensure that they are able to carry out their duties comfortably.
10. The government must establish closed circuit television (CCTV) and a metal detector in each court to control security at the courts and to protect court facilities.
11. The court should organise effective coordination with the PNTL to provide adequate security to court clerks who are executing court orders in the community.
12. The National Parliament should issue official documents such as draft laws and laws in Tetum to facilitate understanding by everyone.
13. The court should issue official documents such as written decisions in Tetum to facilitate understanding by everyone, particularly the affected parties, such as victims and defendants.
14. The Penal Code should have a specific provision on the crime of incest that applies irrespective of the victim's consent or age.

INTRODUCTION

JSMP was established on 28 April 2001 with the aim of monitoring the Indonesian Ad Hoc Tribunals on human rights violations and the Special Panel for Serious Crimes in Timor-Leste. During the last 10 years, JSMP has continued to monitor the justice system in Timor-Leste and advocated to promote transparency and accountability and to uphold the rule of law in Timor-Leste. JSMP's vision is a democratic society where justice and human rights are guaranteed for all.

This year was a significant year for the Timor-Leste justice system. In 2012, the courts were able to process many cases, including major cases involving members of the government. In 2012, the parliament also approved amendments to Law 11/2008 on Private Lawyers and their Training.

Of the hearings conducted by the courts, JSMP was able to monitor 430 criminal and 9 civil cases. JSMP also continued to provide legal education to the community and conduct advocacy on a number of issues such as the crime of incest, the implementation of the Law on Witness Protection and past crimes against humanity.

JSMP wishes to congratulate all judicial actors for their hard work, despite facing challenges and a range of limitations as in previous years. JSMP also wishes to acknowledge our appreciation to the judicial actors who gave their time to collaborate and work effectively with JSMP in 2012.

The objectives of the Overview of the Justice Sector report are as follows:

- provide information to the public so they can be informed about progress achieved and challenges faced by the justice system in 2012
- to analyse legal issues and provide constructive criticism, and
- provide recommendations to relevant parties on how to make lasting improvements in the future.

This report is structured as follows:

Part 1 – Discusses developments in the justice sector in 2012, including the trial of two important cases and amendments to the Law on Private Lawyers and their Training.

Part 2 – Discusses progress achieved and challenges faced by the Timor-Leste justice system, including budgets, human resources and language.

Part 3 – Discusses gender equality, gender-based violence and legal aid provided to female and child victims by JSMP in 2012.

Conclusions and recommendations for improving the justice system in the future.

Annex – Statistics of cases monitored by JSMP and statistics on cases processed by the courts.

1. IMPORTANT DEVELOPMENTS IN THE JUSTICE SYSTEM IN 2012

In 2012, there were many developments in the justice sector which are important to analyse. These developments are as follows:

- The processing of two important cases involving allegations of corruption – the case against Lúcia Maria Brandão Freitas Lobato, the former Minister of Justice and the case of alleged corruption involving Arcângelo de Jesus Gouveia Leite, the former Minister of State Administration and Territorial Planning, and
- Amendments to Law 11/2008 on Private Lawyers and their Training.

A. The case involving Lúcia Brandão Lobato and António de Araujo Freitas (Case number 580/C.Ord/2011/TDD and 622/C.Ord/2011/TDD)

Indictment

This case involved allegations of corruption against the former Minister of Justice, Lucia Maria Brandão Freitas Lobato and a public official, António de Araujo Freitas, who was the Head of the Procurement Department in the Ministry of Justice. The particulars of the case occurred in 2008 and 2009.

The first indictment (Case No. 580/C.Ord/2011/TDD) involved an open tender in 2008 to procure a provider to provide uniforms for prisoners. The public prosecutor alleged that the defendant in her position as Minister of Justice, together with her husband Americo Lopes, contacted a business from Indonesia to provide the uniforms, which violated the rules of procurement established by the government.¹ The public prosecutor alleged that the defendant António Freitas, as the head of the Selection Committee for the tender process, decided to award the tender to WASUPA company because the husband of the co-defendant Lúcia Lobato had made this request. António Freitas also provided documents concerning this tender to the Selection Committee from the Ministry of Public Works for signature, however the Committee was not given time to read the contents of the documents. It was alleged that António Freitas also falsified the signature of one of the members of the Selection Committee in the favour of the WASUPA company.

The second indictment (Case No. 622/C.Ord/2011/TDD) involved an open tender in 2009 to procure a provider to construct Civil Registry Offices in 8 districts: Manatuto, Lospalos, Oecusse, Ermera, Aileu, Covalima, Baucau and Same. Based on an evaluation from the Ministry of Public Works that was conducted through Civil Architecture and Engineering Consultants Ltd in 2007 which was used as a reference for funding, each office would cost a maximum of US \$167,502 to construct. The public prosecutor alleged that the defendant in her position as Minister decided to allocate US \$200,000 for each office without consulting the relevant department and without pursuing any technical studies or reference to procedures, and without legitimate reason. It was alleged that this act violated the government's procurement rules.

The public prosecutor also alleged that the defendants colluded in selecting Zorro Construction Ltd as the winner of the contract to construct the Civil Registry Office in Lautem District because the director of this company had a good relationship with the leader of the Social Democratic Party (PSD). The defendant António Freitas as the President of the Selection Committee recommended for Zorro Construction Ltd to win the contract in Lautem District, even though the Selection Committee did not recommend this company. It was alleged that the defendant Lúcia Lobato also awarded the tender to companies in the districts of Aileu and Manufahi even though these companies did not submit a proposal with competitive pricing.

¹ Law No. 10/2005 on Rules of Procurement

According to the public prosecutor, the actions of the defendants caused the State to lose US \$67,745. The public prosecutor charged Lúcia Lobato for being involved in the crime of aggravated maladministration under articles 274 and 301 of the Penal Code, aggravated abuse of power under articles 297 and 301 of the Penal Code, as well as the crime of economic involvement in a contract pursuant to article 299 of the Penal Code. The public prosecutor charged António Freitas with the crime of abuse of power and falsification of documents in accordance with article 263 of the Indonesian Penal Code (which is the same as article 304 of the Timor-Leste Penal Code) and the crime of maladministration under article 274 of the Penal Code.

As these two cases are similar in nature and content, the court decided to conduct a joint trial.

The trial process

The court summoned the defendants to attend a hearing on 14 March 2012, however the court could not conduct the hearing because the National Parliament had failed to remove the immunity of the Minister of Justice. On 20 March 2012, the National Parliament approved Resolution No. 87/II pursuant to article 113.1 of the Constitution to definitively remove the immunity of the Minister of Justice.²

The trial took place between 24-27 April 2012 and 23-25 May, and final allegations were presented on 28 May and 30 May 2012. Over the 9 days, the court heard testimony from 27 witnesses. One witness, José Belo, who works as a journalist for Tempo Semanal, chose to remain silent as provided for in article 126 of the Criminal Procedure Code.³ Several witnesses were business proprietors and there were also civil servants from the Ministry of Justice and members of the tender Selection Committee.

During the trial the defendants testified that they did not directly carry out work relating to logistical matters, including overseeing or directly dealing with the procurement of uniforms, quantity or equipment for the registry offices. Lúcia Lobato maintained her position that she only signed documents relating to the nomination of the aforementioned companies based on recommendations made by Antonio Fretas in his capacity as President of the Selection Committee. Antonio Fretas stated that he nominated the aforementioned companies because they fulfilled the requirements to win the tender. Lúcia Lobato testified that she favoured the selection of a company that submitted a large bid because that company prioritized quality.

In the final allegations (30 May 2012), the public prosecutor maintained his charges and requested for the court to sentence the defendant Lúcia Lobato to 12 years imprisonment and the defendant António Freitas to 9 years imprisonment. The public prosecutor also requested for the court to sentence the defendants to pay compensation to the State totalling US \$67,745 under article 72 of the Criminal Procedure Code and articles 103 and 104 of the Penal Code.

Decision of the court of first instance

On 8 June 2012 the Dili District Court handed down its decision against the defendants Lúcia Lobato and António Freitas. Lucia Lobato was sentenced to 5 years imprisonment in relation to the crime of economic involvement in a contract and ordered to pay compensation to the State of US \$4,350 (to be shared with the co-defendant António Freitas), and to pay court costs of US \$300. She was acquitted of the other charges (crime of maladministration and abuse of power).

² JSMP Thematic Report, 'Special Privileges and Parliamentary Immunity: How to ensure equality before the law?' (June 2012) : <www.jsmp.tl>

³ Article 126.1 of the Criminal Procedure Code states that "Church or religious ministers, lawyers, medical doctors, journalists, members of credit institutions and other persons allowed or required by law to maintain professional secrecy may refuse to give a deposition on facts covered by that secrecy".

The defendant Antonio was fully acquitted from all charges, however he was ordered to pay compensation of US \$4,350 to be shared with the defendant Lúcia Lobato.

Ordinary appeal

On 17 July 2012, the public prosecutor and defence both lodged an appeal to the Court of Appeal after receiving the written decision. The Court of Appeal registered the appeal. After five months, on 12 December 2012, the Court of Appeal issued its final decision to the applicants. This decision upheld the decision of the court of first instance against the defendant Lúcia Lobato. However, the defendant António Freitas who was previously acquitted by the court of first instance, was sentenced to 5 years imprisonment by the Court of Appeal for the crime of maladministration for granting the tender relating to the construction of civil registry offices in 8 districts and ordered to pay compensation totalling US \$52,000.

In addition, the public prosecutor requested for the court to detain the defendants so they could not flee jurisdiction. Therefore, on 28 December 2012, the police arrested Lúcia Lobato and placed her in the detention at the Caicoli police station. On 29 December 2012, the Dili District Court conducted a hearing to decide on restrictive measures. The court decided to apply the restrictive measure of proof of identity and residence as set out in article 186 of the Criminal Procedure Code against Lúcia Lobato, and seized her passport and requested for immigration to cancel the defendants' passports if they showed intent to travel overseas.

Extraordinary appeal

On 13 December 2012 the defence team submitted a notification of appeal and informed the Court of Appeal of their intention to lodge an extraordinary appeal against the appellate court's decision. Under the criminal procedure law there are two types of extraordinary appeal, namely for a review of the case or for the establishment of jurisprudence (article 314 of the Criminal Procedure Code). This notification was submitted by the defence team with the aim of obtaining a review in accordance with article 315 of the Criminal Procedure Code (regarding the grounds for a review and the admissibility thereof). However, on 14 December 2012 the Court of Appeal issued a decision that the defence did not have strong grounds for lodging an extraordinary appeal, although the Court of Appeal had not yet received the extraordinary appeal itself.

On 16 January 2013, after the conclusion of the judicial recess, the defence submitted an extraordinary appeal to the Court of Appeal functioning as the Supreme Court. On 18 January 2013, the Supreme Court issued a decision rejecting the extraordinary appeal from the defence because of lack of grounds for requesting a review in accordance with article 315 of the Criminal Procedure Code.

After receiving this decision, the defence immediately stated that the decision was not valid in accordance with article 103.3(a) of the Criminal Procedure Code regarding an irreparable nullity because the court was constituted by the same judges, both at the level of ordinary appeal and extraordinary appeal. The defence requested for the Supreme Court to be constituted by new judges because the judges that issued the decision for the ordinary appeal were also members of the panel that issued the decision of the Supreme Court rejecting the request for an extraordinary appeal.

Based on JSMP analysis, the procedural law does not clearly state that the composition of judges for an ordinary appeal must be different to the composition of judges for an extraordinary appeal. However, JSMP believes that if there is the same composition of judges at the level of ordinary appeal and extraordinary appeal, this can impact on the principle of a fair and impartial trial. The public may view this decision as biased or unjust because the decision against the extraordinary appeal was made by the same panel of judges who heard the ordinary appeal. JSMP is concerned that the same judges cannot impartially review its own decision. JSMP also believes that if there is the same composition of judges at each level of the court, it

is very difficult to avoid a conflict of interest. JSMP notes that the Court of Appeal only needed two days to hand down its decision against the extraordinary appeal.

Article 2 of the Indonesian Criminal Procedure Code clearly deals with the composition of judges at both the level of ordinary appeal and extraordinary appeal. Article 239 states that if a judge issues a decision in a case at the court of first instance and is then appointed as a judge at the Court of Appeal, then that judge is prohibited from handling the same case at the appellate level. Also, article 251.3 states that if a judge has handled a case at the court of first instance or the Court of Appeal, then that judge may not act as a judge or court clerk at the level of extraordinary appeal in the same case. The Indonesian Criminal Procedure Code has clear provisions on this issue, in comparison with the Timor-Leste Criminal Procedure Code, regarding the rules on the composition of judges in the same circumstances that have occurred in this case.

Although the defence submitted an objection regarding this error, the sentence was executed. The execution of the sentence was carried out by the Dili District Court in accordance with article 326 of the Criminal Procedure Code regarding executive competence. Lúcia Lobato was sent to Gleno jail on 22 January 2013 and António Freitas was imprisoned on 23 January 2013.

Habeas corpus

On 22 January 2013 the defence team for Lúcia Lobato submitted a *habeas corpus* application to the Court of Appeal because a Supreme Court has not yet been established in Timor-Leste to accept requests for *habeas corpus* in accordance with article 205 the Criminal Procedure Code. The defence team claimed that the detention of their client was illegal.

What is ‘habeas corpus’?

Article 33 of the Constitution states that everyone who is illegally detained has the right to receive remedy through *habeas corpus*. ‘Habeas corpus’ is a concept which developed in common law jurisdictions as a way to protect people from illegal detention. Any person can use it to request a particular institution to provide justification/grounds for a detention. The term ‘habeas corpus’ literally means ‘may you have the body’.

Article 205 of the Criminal Procedure Code states that people who are in illegally placed in detention or jail can request the Supreme Court to grant them ‘habeas corpus’. This article states that a detention or imprisonment is illegal/unlawful when:

- the detention is carried out by an entity/institution without competence to do so
- the decision is motivated by a reason which is not permitted by law
- the detention of a person has exceeded the 72 hour deadline for the presentation of the person for his or her first judicial questioning, or
- the person is kept on premises other than the ones permitted by law.

On 30 January 2013 a panel of judges comprising the President of the Court of Appeal, Claudio de Jesus Ximenes, Jose Luis da Goia, and Maria Natercia Gusmão Pereira issued a decision rejecting the application for *habeas corpus* submitted by the defence team in the case of Lúcia Lobato. This decision rejected the *habeas corpus* application from Lucia Lobato without ordering the applicant to pay court costs.

In his decision, the President of the Court of Appeal Claudio Ximenes chose to grant the *habeas corpus* application. The President of the Court of Appeal ruled that Lúcia Lobato could not be detained because the

process was still ongoing and no final decision had been issued carrying the full force of the law because at that time, the court was still examining the request for an extraordinary appeal. However, the other two judges ruled that the detention was valid and decided to reject the request for *habeas corpus*. Therefore, Lucia Lobato is required to serve her prison sentence.

JSMP's observations

The crime of corruption is a serious crime that impedes social and economic development. Corruption can increase poverty because it can prejudice the State's financial position as well as violate the civil and economic rights of all citizens.

Efforts to eradicate corruption in Timor-Leste are showing positive results. The State has established an Anti-Corruption Commission (KAK) to eradicate corruption. KAK, the Public Prosecution Service and the courts have demonstrated their commitment to investigate and try those suspected of committing corruption. Investigating corruption is a difficult task, however the public prosecutor has managed to bring several suspects before the courts.

In relation to this case, JSMP observed that the trial process largely progressed smoothly because the court actors, judges and public prosecutors carried out their duties in a professional manner, despite the case taking a long time to be resolved. JSMP also observed a number of errors that occurred while this case was being processed.

Firstly, the composition of judges to hear the request for an extraordinary appeal was the same as the panel of judges at the level of ordinary appeal (the same three judges on the same panel). JSMP believes that although the Criminal Procedure Code does not have clear provisions on this matter, the conduct of this trial may give rise to public concern in relation to principles of impartiality, objectivity and a fair trial which are binding on the courts.

Secondly, Lúcia Lobato as the former Minister of Justice occupied a high post in government and had access to considerable funds, but she was given legal assistance by the Public Defender's Office. In the opinion of JSMP, it was not appropriate for Lúcia Lobato to receive legal assistance from public defenders because she had the economic means to pay for private lawyers to defend her rights. JSMP makes this statement with reference to Law No. 38/2008 regarding the Statute of the Public Defender's Office, with particular reference to article 6. This article clearly states that when a public defender provides legal assistance to a defendant, it must be demonstrated that the defendant does not have sufficient economic means. JSMP questions if the former Minister of Justice should have been given legal assistance by public defenders in this case.

RECOMMENDATION 1

The panel of judges hearing an ordinary appeal should be of different composition to the panel hearing an extraordinary appeal in order to avoid questions of impartiality and conflict of interest.

RECOMMENDATION 2

The State should urgently establish a Supreme Court so that the Court of Appeal does not perform a dual role and to clearly separate the functions of the Court of Appeal and the Supreme Court.

RECOMMENDATION 3

The Public Defender's Office should have a comprehensive understanding of their role regarding the provision of legal assistance to defendants in need of stated-funded legal assistance in accordance with their statute and not provide legal assistance to defendants who have sufficient financial means to engage a private lawyer.

B. The case involving Arcângelo Leite (Case number 142/Crm.C/2012/TDB)

In 2012, the Baucau District Court settled a criminal case involving maladministration allegedly committed by Arcângelo de Jesus Gouveia Leite, who at that time was the Minister for State Administration and Territorial Planning (2007 – 2012) and Bernardo Ornai, a public official in the Baucau District regional government. The indictment related to their involvement in a tender process in Baucau District on 12 May 2009.

On 11 June 2011, the Baucau District Court sent a request to the National Parliament to remove the legal immunity of Minister Arcângelo Leite so that he could attend the trial and respond to the charges. The parliament only managed to vote on 23 April 2012 – and on this date the National Parliament approved Resolution No.70/II to remove the legal immunity of Minister Arcângelo Leite. The Baucau District Court adjourned the trial until 20 June 2012, one year from the initial request, because the parliament failed to fulfil its obligation. The matter progressed very slowly in the parliament which had a major impact on the processing of this case. For this reason, the case had to be suspended for a year pending a decision from the National Parliament to remove the legal immunity of the defendant.

The trial was conducted over five days: 20, 21, 22, 26 and 28 June 2012. The trial ended when the court of first instance decided to acquit the defendant because during the examination of evidence, the public prosecutor failed to produce concrete evidence. Therefore, on 4 July 2012, the panel of judges acquitted Arcângelo Leite and Bernardo Ornai from all charges.

The public prosecutor submitted an appeal to the Court of Appeal against this decision on 10 July 2012. The Court of Appeal rejected the appeal because it considered the decision of the court of first instance to be legitimate. Therefore, the decision of the Baucau District Court came into full force on 18 January 2013.

Indictment and decision

The charges against Minister Arcângelo Leite and Bernardo Ornai related to their alleged involvement in a tender process in the Baucau District. The Baucau District government had announced an open tender for a project to construct a primary school in Ossogari. When the tender was opened to the public, many companies entered a bid. From these bids, the Regional Selection Committee chose two companies, Univem Unipessoal Ltd and Lamegua Star Ltd.

Lamegua Star Ltd fulfilled all of the necessary requirements and was considered to be a competent bidder. The second company, Univem Pessoal Ltd, was considered not to have fulfilled the requirements regarding previous work experience because of previous poor performance. Most of the members of the Regional Selection Committee wanted to grant the contract to Univem Pessoal Ltd. However Bernardo Ornai, who was a public official (President of the CPI/DDO) with the Baucau District Regional Government, did not agree and favoured Lamegua Star Ltd who had submitted a better bid and had good previous work experience and had submitted a proposal deemed to be still within the available funding limits.

Bernardo Ornai convinced the members of the Regional Selection Committee to choose Lamegua Star Ltd, however some members were unhappy with this decision and tried to change it. It was unclear to the court who had wanted to change the decision and had placed pressure on Bernardo Ornai, or who had made the accusation that Bernardo favoured Lamegua Star Ltd.

When the Minister for State Administration and Territorial Planning received the complaint from a member of the Regional Selection Committee he responded by stating that there was a technical fault. However, the initial decision of the Regional Selection Committee to select Lamegua Star Ltd would be maintained. The public prosecutor accused Bernardo Ornai and Minister Arcângelo Leite with favouring Lamegua Star Ltd and charged them with the crime of maladministration as set out in article 278 of the Penal Code.

On 4 July 2012 the panel of judges decided to acquit Arcângelo Leite and Bernardo Ornai from all charges because it was not proven that they had favoured or intended to favour Lamegua Star Ltd. The court believed that Bernardo Ornai and Minister Arcângelo Leite made a reasonable decision in accordance with the procurement rules.

JSMP's observations

As noted already by JSMP in the case involving Lúcia Lobato, charges of corruption against a member of the government are very serious and the process must be transparent.

JSMP is unable to fully analyze this decision because the court did not provide the full decision to JSMP. JSMP submitted a request to the Baucau District Court on three occasions – on 16 November 2012, then on 14 December 2012 and again on 8 February 2013 – to obtain a copy of the written decision. JSMP only received a partial copy of the decision on 27 February 2013.

JSMP believes that the court must provide all documents, including copies of the indictment and written decisions, if the case is public in nature and if the public has a legitimate interest. Articles 75.1(c) and 77.3 of the Criminal Procedure Code state that everyone has the right to obtain or access copies of the decision if that person has a legitimate interest and the judicial authorities have granted authorization.

JSMP requests that the courts ensure that all processes are transparent and make available all written decisions so that members of the public who have an interest in a case can have better access. Moreover, JSMP believes that all cases involving corruption are of public interest and therefore the public has the legal right to access the trial and all available decisions. This right does not extend to cases involving minors and cases that have limitations placed on their public nature by article 76.1 of the Criminal Procedure Code.

JSMP also requests for the courts to carry out proper filing procedures in all cases to avoid lengthy delays when an institution or individual who has a legitimate interest requests to obtain a copy of the case file once the trial has been completed.

JSMP also believes that it is very important that when the National Parliament receives a request from any court, the parliament must immediately hold a plenary session to discuss that request. This did not occur in the cases involving Arcângelo Leite and had a major impact on the trial process. JSMP recommends for the parliament to collaborate effectively with the courts to avoid impeding the legal process.

RECOMMENDATION 4

Courts should make available all documents from every case, including written copies of the indictment and decisions, if the case is public in nature and the public has a legitimate interest as set out in article 75.1(c) and article 77.3 of the Criminal Procedure Code. This does not include cases involving minors and those cases which are exceptions to the public nature of proceedings as set out in article 76.1 of the Criminal Procedure Code.

RECOMMENDATION 5

The court should properly archive all cases that have been processed.

RECOMMENDATION 6

The National Parliament must collaborate better with the courts to avoid impediments to legal proceedings involving members of the government or the National Parliament who have legal immunity.

C. Amendments to the Law on Private Lawyers

On 14 July 2008, the State promulgated Law No. 11/2008 on Private Lawyers and their Training ('Law on Private Lawyers'). This law regulates the practice of private lawyers and establishes a training program at the Judicial Training Centre (CFJ) to standardize the capacity of private lawyers.⁴ The law has its origins in article 135 of the Constitution (lawyers) and article 136 of the Constitution (guarantees in the activity of lawyers).

This law was enacted in 2008 and there were several problems with its implementation, including the extremely limited transitional period. Article 68 stated that law graduates who were practising before this law was enacted could continue their practice for four years, until 14 July 2012. However, this period was not sufficient because many private lawyers had not attended training because the CFJ commenced late - the law was enacted in 2008, however training for private lawyers in the CFJ only started in 2010.

First amendment to the Law on Private Lawyers (Decree Law No. 39/2012)

JSMP with a number of other NGOs advocated for an immediate amendment to this law, especially the transitional period. However until June 2012, there was no plan from the National Parliament or the Ministry of Justice to amend this law. This situation potentially meant halting the practice of private lawyers who had been working since Timor-Leste was established as a sovereign nation. Should this have occurred, JSMP believed it would have been disastrous for the Timor-Leste justice system because there are only a small number of public defenders and without private lawyers, there will be limited public access to legal aid services to meet the needs of the community.

In May 2012, the Ministry of Justice noticed that the time limit given to private lawyers to continue their practice was about to expire. The Ministry of Justice took the initiative to immediately propose an amendment to the Law on Private Lawyers and submitted this proposal to the National Parliament for further consideration. However the National Parliament at that time could not establish a quorum and referred the proposed amendment to the Council of Ministers.

On 30 June 2012 the Council of Ministers approved changes to the Law on Private Lawyers by amending three articles:

- Article 57 on the composition of the Legal Profession Management and Disciplinary Council (CGDA) – this amendment excludes representatives from NGOs and only includes 2 representatives from the Timor-Leste Bar Association (AATL).

⁴ 'Private Lawyer' means all lawyers who do not work for the government like judges, prosecutors and public defenders and who do not receive a government salary, rather they only carry out their work based on the kindness of their clients and this includes lawyers that work for NGOs.

- Article 68 on the transitional period – this amendment extends the transitional period until 31 December 2015 to enable law graduates to continue to provide independent legal assistance without attending training at the CFJ.
- Article 72 on a headquarters for private lawyers – to confirm that the government must ensure and guarantee the necessary budget for the functioning of the administrative services of the Legal Profession Management and Disciplinary Council.

On 19 July 2012 the Council of Ministers submitted the proposed first amendment to the President for promulgation.

On 15 June 2012, JSMP delivered a legal advice to the President and requested for the President to promulgate the proposed Decree Law on the First Amendment to Law No. 11/2008, 30 July, regarding the Law on Private Lawyers and their Training, as submitted by the Council of Ministers. In the legal advice, JSMP requested for the President to promulgate the amendment to protect the interests and rights of the community to have access to the courts through the formal justice system. JSMP believes that the provision of legal aid and a good judicial system does not only require a sound law and adequate funds, but also requires good human resources including private lawyers who are an essential element.

The President referred the proposed amendment to be discussed by the National Parliament, however after 30 days the National Parliament had not discussed the matter because at that time the National Parliament was busy with political campaigning activities leading up to the 2012 election. Therefore the decree law was deemed legitimate and was promulgated on 26 July 2012 as Decree Law No. 39/2012 on the First Amendment to Law No. 11/2008. This law was promulgated in the State Gazette on 1 August 2012.

Second amendment to the Law on Private Lawyers (Proposed amendment No. I/III/I)

On 18 December 2012, the National Parliament approved the Proposed Amendment No. I/III/I regarding a second amendment to the Law on Private Lawyers which was submitted by Committee A. The proposed amendment was aimed at annulling Decree Law No. 39/2012 which had already been enacted. The National Parliament proposed the amendment to respond to public concern and confusion about the constitutional validity of the first amendment made by decree law. The proposed amendment also altered several articles in the Decree Law.

Overall, this proposal was a copy of the First Amendment. It aimed to remove public doubt about constitutional validity, with specific regard to the exclusive competence and shared competence of the National Parliament and the government in relation to the decree law. The Proposed Amendment No. I/III/I amended five articles:⁵

- Article 2.3(b) on the requirements to practice as a lawyer – this amendment enables lawyers from common law jurisdictions to practice in Timor-Leste. Before this amendment, only lawyers from civil law jurisdictions could be registered without having to attend training at the CFJ.
- Article 57 on the composition of the Legal Profession Management and Disciplinary Council – this amendment takes away the competence of the CFJ to select a member to the council and gives competence to the government to choose three members, as well as the competence to NGOs and the AATL to choose one member.
- Article 68 on the transitional period – as in the first amendment, this second amendment states that the transitional period will continue to 31 December 2015 in order to allow law graduates to continue providing independent legal assistance without having to attend the CFJ.

⁵ JSMP Press Release, 'NP approves Amendment to the Law on Private Lawyers and their Training' (21/12/12): <www.jsmp.tl>

- Article 70 on sporadic legal practice – this amendment states that law graduates from overseas can also provide sporadic legal services in Timor-Leste, however they must work together with a Timorese lawyer. This amendment also states that they can only provide sporadic legal services four times a year.
- Article 72 on the headquarters for private lawyers – this is the same as the first amendment, this second amendment re-states that the government must ensure the necessary budget for the functioning of the Legal Profession Management and Disciplinary Council.

Constitutional issues

The Timor-Leste Constitution divides legislative competence between the parliament and the government (article 97 on the power to initiate laws). The parliament has exclusive competence to make laws in specific areas set out in article 95.2, which includes territorial issues, citizenship, human rights, electoral laws and the education system. The parliament may also authorize the government to make laws on specific issues that are provided for in article 96.1, such as definition of crimes, definition of civil and criminal procedure and general rules and regulations for the public service. Without authorization from the parliament, the government may not make laws in areas defined by article 96.1 of the Constitution.

The Constitution acknowledges that the government has exclusive competence to make laws on its own organization and functioning, as well as the direct and indirect management of the State (article 115.3). The government can also submit bills and draft resolutions to the National Parliament (article 115.2).

The Constitution does not define the general rules for all laws – such as existing legislation, legislations that can be drafted by government bodies and the hierarchy of all of these forms of legislation. However, general rules can be established by interpreting the Constitution and Law No. 1/2002. Timor-Leste only has two forms of legislation, namely: 'laws' and 'decree-laws'. 'Laws' are legislation passed by the parliament and 'decree-laws' are regulations made by the government. Both laws and decree-laws have the same force in terms of their application. However, general rules apply:

1. The government cannot legislate by means of a decree-law in areas that are within the exclusive legislative competence of the parliament under article 95.2 (for example, a decree-law legislating on conditions for citizenship is not allowed).
2. The government cannot legislate by means of a decree-law in areas that are listed in article 96.1 without authorisation from parliament (for example, a decree-law may not define a new crime if the government does not have authorization from the parliament to make law on this issue).
3. When there is conflict between laws, the subsequent law is to be applied. This means that subsequent laws will amend prior laws.
4. If a law and a decree-law are in conflict and relate to an area which is not within the exclusive competence of the Parliament, the subsequent legislation (law or decree-law) will be applied. This means that decree-laws can amend laws and laws can amend decree-laws.

The National Parliament passed the Law on Private Lawyers in 2008 to regulate the practice of private lawyers. It is clear that parliament had competence to pass this law, however it is not in an area of exclusive competence under article 95.2 or article 96.1 of the Constitution. On 30 June 2012, the Council of Ministers (the government) approved the first amendment to the Law on Private Lawyers as a decree law. JSMP believes that this decree-law was legitimate and validly amended the Law on Private Lawyers (refer to rule 4 above).

On 18 December 2012, the National Parliament approved an amendment to annul the decree law that had previously been issued by the Council of Ministers. This second amendment was also legitimate as a subsequent law.

JSMP observed that this process caused much confusion and was inefficient. JSMP hopes that in the future, the parliament and the government will follow the Constitution and general rules on making legislation to prevent this type of confusion from arising.

RECOMMENDATION 7

The National Parliament and the government should consult each other regarding the drafting of laws or amending legislation to avoid confusing the public, for example in the case of the amendments to the Law on Private Lawyers and their Training.

2. DEVELOPMENTS AND CHALLENGES

In this section, JSMP will discuss developments in the justice system during 2012 – in the courts, the Public Prosecution Service and the Public Defender's Office. This section will analyse progress achieved and the challenges faced by the justice sector in order to provide recommendations on areas for improvement in 2013 and beyond.

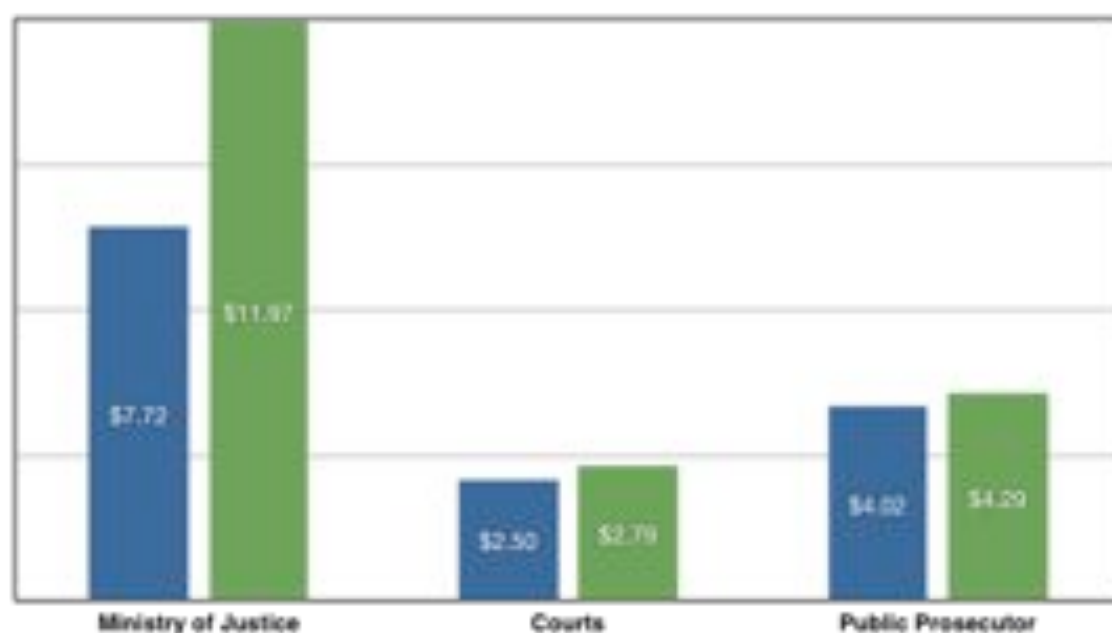
A. Budget for the justice sector in 2012

In 2012, the Ministry of Justice was allocated a total budget of US \$11.97 million. Other justice sector institutions received the following amounts:

Table 1: Budget for the justice sector in 2012⁶

	Budget in 2011	Budget in 2012
Ministry of justice, including:	\$7.72 million	\$11.97 million
- Public Defender's Office	\$0.63 million	\$0.63 million
- Judicial Training Centre	\$0.20 million	\$0.17 million
Tribunals, including:	\$2.50 million	\$2.79 million
- Court of Appeal	\$1.87 million	\$2.36 million
- District Courts	\$0.61 million	\$0.41 million
Public Prosecutor	\$4.02 million	\$4.29 million
Total	\$14.24 million	\$19.05 million

Graph 1: Comparison of budgets for the justice sector – 2011 and 2012 (millions)



⁶ 2013 State Budget, Book 4A and Book 4B.

Although the budget for the justice sector increased in 2012 in comparison with 2011, JSMP is concerned that the district courts still have very limited budgets. This is of concern for JSMP because the district courts deal with the majority of cases and need greater human resources to process all of the registered cases in a timely manner. With the very limited budgets allocated, not all district courts can conduct the mobile court service which was provided in previous years, for example at the Baucau District Court and the Suai District Court. JSMP questions why the budget allocated to the Court of Appeal is larger than the budget allocated to all of the district courts. Based on JSMP monitoring, the Court of Appeal only has to handle a small number of cases in comparison with the district courts.

RECOMMENDATION 8

The budget for each court should better reflect the reality of the conditions faced by each court.

B. Infrastructure and human resources in each institution

Based on monitoring conducted by JSMP in 2012, as in previous years the Court of Appeal continues to have good facilities and human resources in comparison with the district courts. The Court of Appeal has adequate space, equipment and staff to work efficiently. The district courts still face obstacles related to a lack of human resources and facilities, such as at the Suai District Court and the Oecusse District Court which have extremely limited numbers of court actors (as can be seen below in the graph on court actors). JSMP also notes that the Public Defender's Office faced challenges relating to transport and equipment to support the provision of legal assistance and ensure that their work can be carried out efficiently and effectively.⁷

In addition, all of the district courts continued to face problems with security. Even though the State has provided members of the Timor-Leste Police Force and civil security guards, the courts still face problems relating to the theft of facilities.⁸ The courts recommend for a Closed Circuit Television (CCTV) system to be installed together with metal detectors to control security at the courts, to monitor visitors to the courts and to detect and prevent dangerous objects from being brought into the courts.

Based on interviews with court officials, JSMP understands that they have been threatened while executing court decisions. In many cases, court officials are mistreated by members of the community and face situations that could endanger their safety because they don't have proper support from the police to ensure their safety.⁹

In 2012 there were problems with infrastructure such as accommodation for judges, as well as problems with electricity and clean water. Moreover, the security provided to accommodation for judicial actors was not optimal. Until now, the government has only built accommodation for court officials at the Suai District Court, but not in other locations.

There was an increase in human resources for the courts, the Public Prosecutor's Office and the Public Defender's Office in 2012. This is a very positive development for the justice sector. The composition of judicial actors can be seen in the table below.

⁷ Interview with Cancio Xavier and Sérgio de Jesus Hornai on 19 and 21 November 2012; interview with Gregório de Lima on 26 November 2012.

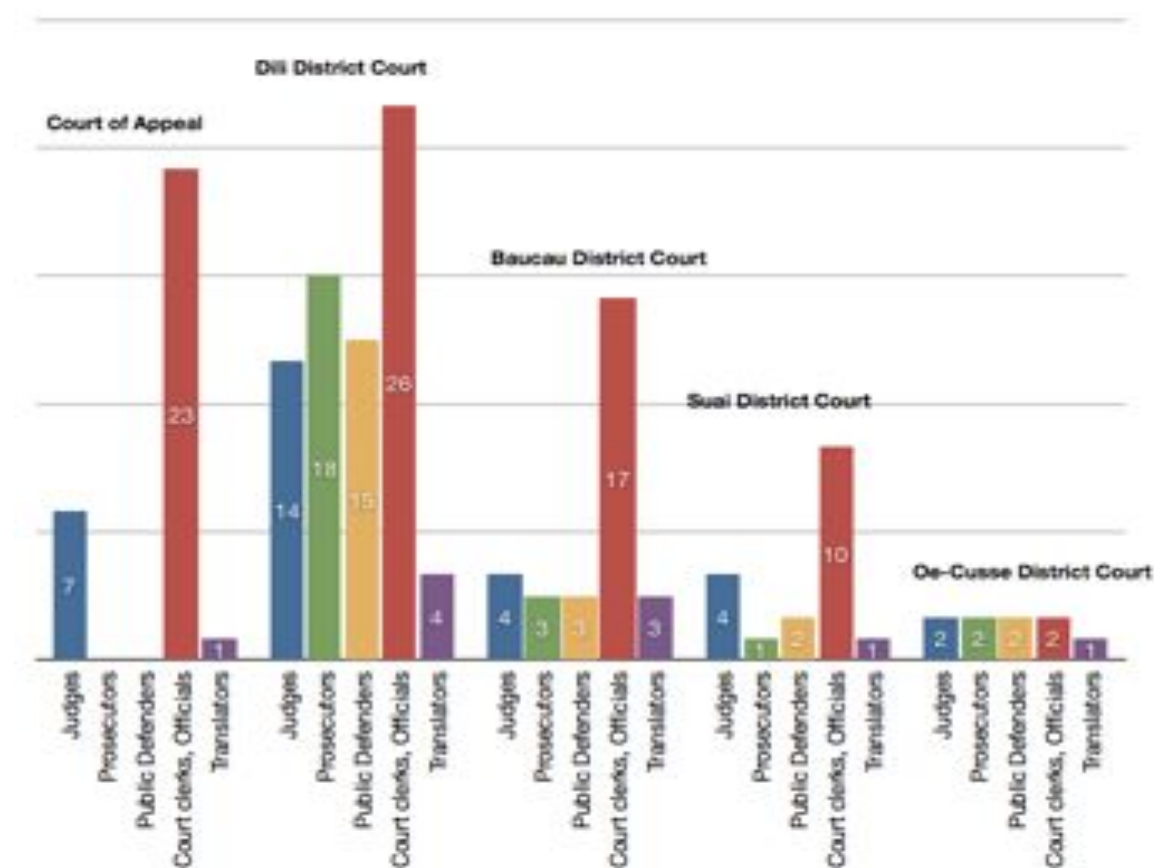
⁸ Interview with The Judge Administrator of the Dili District Court, Duarte Tilman on 20 November 2012.

⁹ Interview with The Chief of the Civil Section, Dili District Court, Sra. Malena M.A. da Piedade on 20 November 2012.

Table 2: Total number of judicial actors in each of the courts

Judicial actor	Court					Total
	Appeal	Dili	Baucau	Suai	Oe-Cusse	
Judges	7	14	4	4	2	31
Prosecutors	-	18	3	1	2	24
Public Defenders	-	15	3	2	2	22
Court clerks / officials	23	26	17	10	2	78
Translators	1	4	3	1	1	10
Total	31	77	30	18	9	165

Graph 2: Comparing the number of judicial actors in 2012



RECOMMENDATION 9

The government must examine the condition of accommodation for court clerks in each district court to ensure that they are able to carry out their duties comfortably.

RECOMMENDATION 10

The government must establish closed circuit television (CCTV) and a metal detector in each court to control security at the courts and to protect court facilities.

RECOMMENDATION 11

The court should organise effective coordination with the PNTL to provide adequate security to court clerks who are executing court orders in the community.

C. Language

Article 13 of the Timor-Leste Constitution states that the official languages of Timor-Leste are Tetum and Portuguese. Article 159 states that Indonesian and English are working languages that can be used in the civil service with the official languages as long as deemed necessary.

However, the exclusive use of Portuguese is still a serious concern and a major obstacle in the legal system in Timor-Leste. As has been the practice previously, in 2012 all laws were only written in Portuguese. This situation is a major challenge for all citizens of Timor-Leste who seek justice through the formal justice system. As observed by JSMP in its annual Parliament Watch Project Report for 2012, Portuguese also causes confusion in the National Parliament because most members of parliament don't possess a good understanding of Portuguese.

JSMP is concerned because from the commencement of the first legislative period until now, the National Parliament has not had official translations for most of the laws that have been drafted and approved by the parliament itself. JSMP continues to urge for the third legislative period of the National Parliament to translate all laws so that the parliament can fulfil the provisions of the Constitution and promote Tetum so that everyone can understand the laws that they make.

JSMP acknowledges that judicial actors have to learn Portuguese when they are attending training at CFJ, however three years is not enough time for students to have a good understanding of technical Portuguese. Also, it's important that everyone can read and understand all of the laws, not just the judicial actors, to ensure public access to the justice system in Timor-Leste.

RECOMMENDATION 12

The National Parliament should issue official documents such as draft laws and laws in Tetum to facilitate understanding by everyone.

RECOMMENDATION 13

The court should issue official documents such as written decisions in Tetum to facilitate understanding by everyone, particularly the affected parties, such as victims and defendants.

3. GENDER EQUALITY

In 2012, the Women's Justice Unit (WJU) of JSMP continued to monitor gender equality in the justice sector. In addition, the Victim Support Service (VSS), which became an independent organization on 1 February 2013, continued to provide legal assistance to women and children. In this section, JSMP will provide information and analysis on:

- Gender equality situation in Timor-Leste, particularly cases involving gender based violence and incest, and
- VSS activities in 2012.

A. Gender-based violence

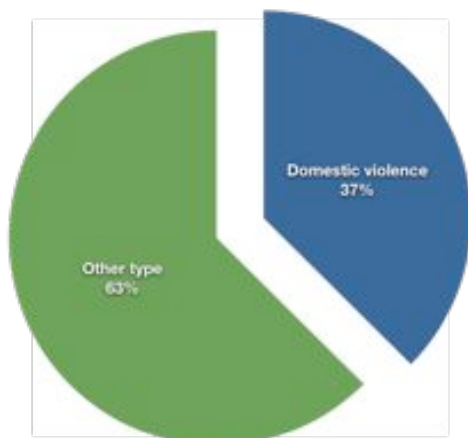
The Timor-Leste Constitution guarantees gender equality. Article 16 of the Constitution, on universality and equality, states that all citizens are equal before the law, regardless of their gender. Article 17 on equality between women and men states that women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life. Timor-Leste has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the State has the obligation to apply this convention in its laws and policies. Further, the State has a specific obligation to ensure that women are able to live free from violence.

However, women in Timor-Leste are extremely vulnerable to violence. Approximately 38% of women in Timor-Leste have experienced physical violence since the age of 15. Thirty-four percent of women have also experienced physical violence from a partner.¹⁰ Domestic violence also has a major impact on children who witness it.



In 2012, JSMP monitored 430 cases (Table 1 in the Annex shows the types of case and the total number of cases monitored by JSMP in 2012). From the 430 cases, 161 involved domestic violence. This means that 37% of cases monitored by JSMP involved domestic violence. The majority of these cases involved domestic violence against a woman by her spouse.

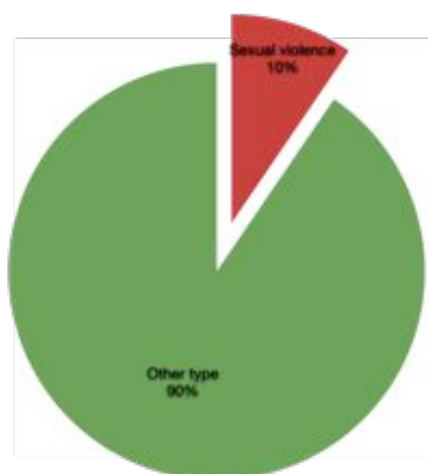
Graph 3: Percentage of domestic violence cases monitored JSMP in 2012



¹⁰ National Directorate of Statistics, 'Timor-Leste Demographic and Health Survey 2009-10' at 229, 236.

JSMP also monitored many cases involving sexual violence against women – including 16 cases of sexual abuse of a minor. Even though men can also experience sexual violence, all of the cases observed by JSMP in 2012 involved female victims.

Graph 4: Percentage of sexual assault cases monitored by JSMP in 2012



These statistics show that the majority of cases processed by the formal justice system are cases involving violence against women or gender-based violence. JSMP also acknowledges that these cases are a small representation of the actual number of incidents of violence against women that occur in Timor-Leste because many cases are not processed through the formal justice system.

Table 3: Total number of gender-based violence cases monitored by JSMP in 2012, across all district courts

Case type	Number	Percentage
Gender-based violence	202	47%
Other type	228	53%
Total	430	100%

Crime of incest

JSMP is also very concerned with the high incidence of incest cases in Timor-Leste. As explained in the JSMP report, 'Incest in Timor-Leste: An unrecognised crime' (August 2012), JSMP believes that incest is a major problem in Timor-Leste. Between January 2010 and June 2012, the Victim Support Service (VSS) unit of JSMP – which has now become an independent institution from JSMP named ALFeLa – gave assistance to 32 victims of incest. WJU also monitored 18 cases of incest between January 2010 and June 2012. Of the cases observed by the WJU, only one involved a VSS client. This means that there were 49 separate cases that were observed or handled by JSMP between January 2010 and June 2012.¹¹

In the above report, JSMP found that the protection given to victims of incest in the Penal Code is weak. There is no specific crime relating to incest and there is a serious problem with the interpretation of article 172 of the Penal Code on rape. To prove rape, victims aged 14 and above must show that the defendant used force or threat of force to have sexual intercourse with the victim. Although it is clear that a victim cannot give consent freely to have sexual intercourse with a close family member, there are several reasons why it is difficult to prove to the court that there was a lack of consent. Victims of incest are often subjected to extreme pressure by the perpetrator and other family members not to provide evidence or to provide false evidence. The victim can also choose to remain silent due to fear of social stigmatisation. Therefore, it is

¹¹ JSMP, 'Incest in Timor Leste: An Unrecognised Crime' (August 2012): <www.jsmp.tl>

essential to recognise incest as a specific crime which applies irrespective of the establishment of use of force or serious threats of force.

On 6 December 2012 JSMP organised a national seminar on incest involving relevant institutions from the justice sector, including the Prosecutor-General who appeared as a speaker in the seminar. In her presentation, the Prosecutor-General stated that incest is already criminalised in the Penal Code and the Law Against Domestic Violence and victims of incest could receive proper protection under the law. JSMP acknowledges that there are several articles that could be applied in cases of incest, such as article 171 on rape and article 117 on the sexual abuse of a minor. However, JSMP research shows that it is often difficult to apply article 117 in cases of incest as explained above.

JSMP is also concerned because often the courts hand down inadequate sentences in cases involving sexual violence and sexual abuse of minors. In one case analyzed in JSMP's report on incest, the defendant committed sexual abuse against his granddaughter and was then given a suspended sentence of four years. Based on these reasons, it's important to have a specific article on the crime of incest and to strengthen the existing provisions in the Penal Code.

RECOMMENDATION 14

The Penal Code should have a specific provision on the crime of incest that applies irrespective of the victim's consent or age.

B. Activities of the Victim Support Service

Victim Support Service (VSS) was established by JSMP as a transitional unit in April 2005. The aim of VSS is to represent and provide legal assistance to victims of domestic violence and gender based violence. VSS also provides temporary material assistance such as accommodation, food and transport. VSS carries out its work with reference to article 25 of the Law Against Domestic Violence that states that victims have the right to legal representation by a private lawyer or public defender.

During the transitional period, JSMP increased the legal skills and management capacity of VSS staff as part of preparations for the unit to become an independent organisation. On 21 December 2012, the JSMP Board decided that the VSS would become an independent organization with the new name of Legal Aid for Women and Children / *Asisténsia Legál ba Feto no Labarik* (ALFeLa).

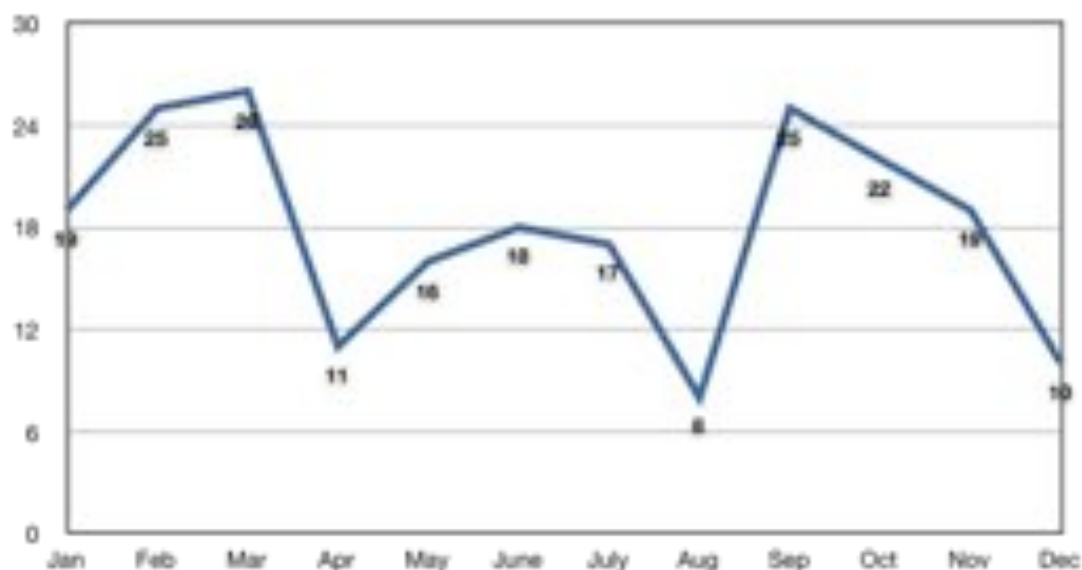
In this report, VSS will summarise its activities to assist women and children to access the formal justice system in 2012. These activities included legal aid, the dissemination of information, training and advocacy in cases of incest.



Statistics – VSS activities in 2012

In 2012, VSS continued to provide legal assistance in new cases involving 216 women and children to enable them to access the formal justice system. VSS also continued to provide legal assistance to clients from previous cases.

Graph 5: Number of cases handled by VSS between January and December 2012



Most of these cases involved domestic violence, sexual abuse, sexual abuse of a minor and rape.¹²

Table 4: Types of cases handled by VSS between January and December 2012

Case type	Total number of cases	Percentage of total
Domestic violence	124	57%
Rape	37	17%
Sexual abuse of a minor	36	17%
Attempted rape	5	2%
Threats	2	1%
Abduction	1	0.5%
Domestic violence - murder	1	0.5%
Civil case (alimony and paternity)	10	5%
Total	216	100%

In 2012, VSS continued to work with service providers such as the VPU, Pradet, Fokupers and other organisations. Table 5 below provides a summary of referral points to VSS by district.

¹²For this table domestic violence includes maltreatment that happens in the family sphere including minor offence against physical integrity (Article 145 of the Penal Code), serious offence against physical integrity (Article 146 of the Penal Code) and maltreatment of a spouse (Article 154 of the Penal Code).

Table 5: Sources of referral to VSS during January – December 2012

District	Ba Futuru	Casa Vida	CJP	Family	OPL	Police	Pradet	Uma Pas Baucau	VSS	Other	Total
Aileu	0	0	0	0	0	1	0	0	0	0	1
Ainaro	0	0	0	0	0	22	0	0	2	0	24
Baucau	0	0	0	1	2	17	1	3	2	0	26
Bobonaro	0	0	0	0	0	7	0	0	2	0	9
Covalima	0	0	0	0	0	27	0	0	0	1	28
Dili	4	0	1	2	0	24	5	0	3	2	41
Ermera	0	0	0	0	0	13	0	0	0	0	13
Lautem	0	0	0	0	0	3	0	0	0	2	5
Liquiça	0	1	0	0	0	3	0	0	0	0	4
Manututu	0	0	0	0	1	2	0	0	0	0	3
Manufahi	0	0	0	0	0	9	0	0	0	0	9
Oe-Cusse	0	0	0	0	0	41	2	0	0	2	45
Viqueque	0	0	0	1	0	7	0	0	0	0	8
Total	4	1	1	4	3	176	8	3	9	7	216

VSS noticed that although there is a referral mechanism in place, women and children are still reluctant to take cases of domestic violence and rape to the formal justice system because of fear and uncertainty about economic support, pressure and shame in the community. Often, victims rely on the person who has committed violence against them and they are afraid that the court's decision will result in them losing the family's main source of income. However, VSS acknowledges that the enactment of the Law Against Domestic Violence is an important step because it establishes a legal framework that is necessary to eradicate domestic violence and rape in Timor-Leste.

Table 6: VSS clients by age, 2012

Age group	Number of clients	Percentage
< 5	1	0.5%
5-12	19	9%
13-16	32	15%
17-25	52	24%
26-35	51	24%
> 35	53	24.5%
Don't know	8	4%
Total	216	100%

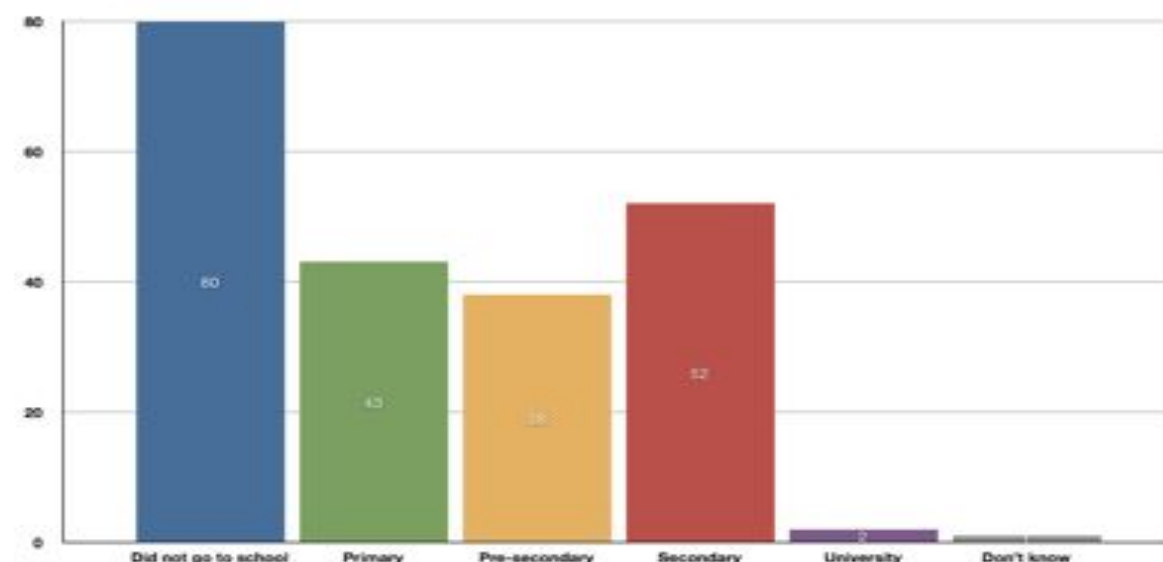
Table 6 shows that 72.5% of VSS clients were adults and 24.5% were children. In many cases, it is difficult to obtain physical evidence, especially in rape cases. Often the victim of rape feels degraded and showers

before making a complaint to the police. In addition, children often feel ashamed and afraid to tell someone else about the abuse that they have suffered.

Table 7: VSS clients by marital status, 2012

Marital status	Number of clients	Percentage
Engaged	1	0.5%
Married	131	61%
Separated / Divorced	2	1%
Single	80	37%
Widowed	2	1%
Total	216	100%

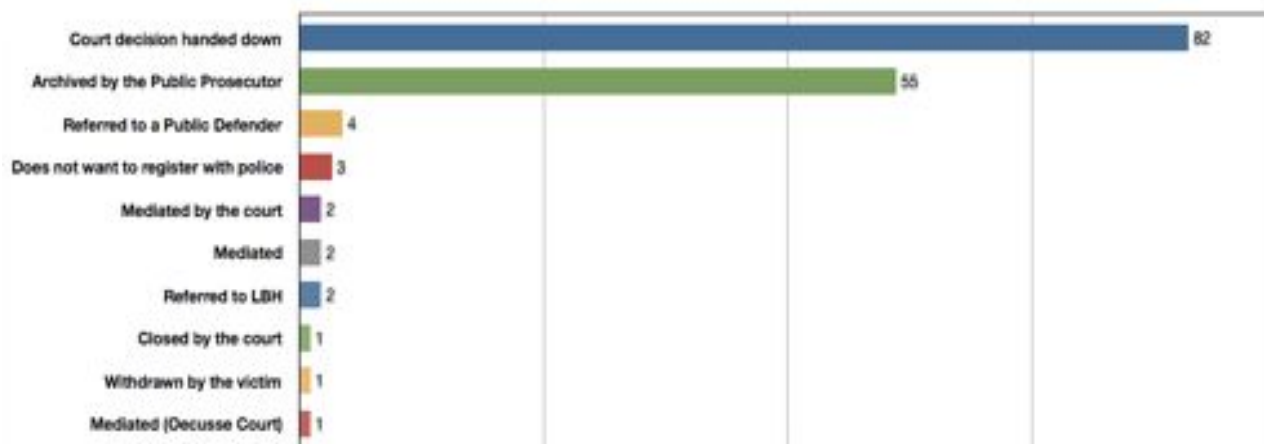
Graph 6: VSS clients by level of education, 2012



The above graph shows that the majority of VSS clients have a very low level of education. This has implications for the work of the VSS, for example it cannot be assumed that clients are literate. This information also shows that most clients are likely to experience difficulties in understanding their rights and the formal justice system.

Of the cases handled by VSS in 2012, 16 cases were decided by the court or a final decision has been handed down. However, of the cases registered at the Public Prosecution Service (135), a number of cases (29) are still with the VPU awaiting investigation, and in three cases the victim has chosen to discontinue the process, and in one case the victim withdrew the complaint from the formal justice system because she wanted it to be resolved through traditional means. In one case the victim was referred to temporary accommodation/a safe house.

Graph 7: Cases from 2005 – 2011 that were decided in 2012



Other VSS activities

In 2012, VSS continued to endeavour to increase public understanding of domestic violence, gender-based violence and the rights of victims through radio programs and training for community leaders, women's groups, youth and senior high school students. In 2012, VSS provided training to 388 participants from nine districts. VSS also continued to work with the police (Vulnerable Person's Unit - VPU). These activities are important in processing cases of violence against women and children. VPU has the duty to investigate cases of gender-based violence and they work closely with civil society and victims to gather evidence, contact service providers such as Fokupers and other organizations that work to uphold the interests of victims.

Activities to raise public awareness need to be continued in the area of gender-based violence. Therefore, VSS also organised training with other organisations on the Penal Code and the Criminal Procedure Code from the perspective of the victim and gender-based violence. VSS also produced educational materials such as posters, brochures, calendars and t-shirts.

Civil society has continued to endeavour to conduct awareness-raising and to monitor the implementation of the Law Against Domestic Violence. In 2012, VSS continued to organise opinion sharing with court actors and public prosecutors, in particular on the implementation of the law. VSS and other organisations conducted monitoring and evaluations of the Law Against Domestic Violence to see if it has resulted in changes to the incidence of cases, as well as conducting reflection exercises through regular meetings.¹³

Obstacles faced by VSS

Although many cases of gender-based violence were processed by the courts, there are still many cases that are not taken to the formal system and victims continue to suffer in silence. There is an ongoing need to raise public awareness on the positive aspects of the formal justice system to encourage victims to have faith in this process. Although there are positive developments relating to these issues, there are still problems relating to limited human resources in key institutions.

Although VSS attempts to help all clients, the justice system still faces limitations such as resources, including the number of public prosecutors and judges. There are also several difficulties relating to legal issues that continue to impede the ability of victims to obtain fair justice in their cases.

¹³ With partner organisations including Fokupers, Pradet, Rede Feto, Alola Fondation, AMKV (Men Against Violence), Forum Tau Matan, Fundasaun Hak, AATL, Forum Peduli Wanita Oecuse, Casa Vida, IOM, UNIFEM, UNFPA, UNICEF, Justice Facility, The Asia Foundation as well as government institutions such as SEPI, MSS MJ and MNE, PDHJ, and the VPU as well as court actors.

CONCLUSION AND RECOMMENDATIONS

2012 was an important year for development across all areas of the State of Timor-Leste, especially in the justice sector, in comparison with previous years since the 2006 crisis. Therefore, JSMP congratulates those working in the justice sector for their excellent efforts and dedication, as detailed in this report.

Although the justice sector has achieved progress in a number of aspects, JSMP monitoring has indicated that there remain weaknesses and obstacles in the justice sector. For example, Portuguese continues to be an ongoing problem, as well as limited resources and other issues.

As stated previously, the aim of this report is to provide information so that the public can be aware of progress achieved and challenges faced by the justice system in 2012. This includes analysing information relating to legal issues in order to make constructive criticism and recommendations for relevant parties and stakeholders for consideration in the future.

JSMP hopes that this *Overview of the Justice Sector 2012* can inform the public about our justice system and how to continue to strengthen it in the future.

Recommendations identified by JSMP in this report are as follows:

1. The panel of judges hearing an ordinary appeal should be of different composition to the panel hearing an extraordinary appeal in order to avoid questions of impartiality and conflict of interest.
2. The State should urgently establish a Supreme Court so that the Court of Appeal does not perform a dual role and to clearly separate the functions of the Court of Appeal and the Supreme Court.
3. The Public Defender's Office should have a comprehensive understanding of their role regarding the provision of legal assistance to defendants in need of state-funded legal assistance in accordance with their statute and not provide legal assistance to defendants who have sufficient financial means to engage a private lawyer.
4. Courts should make available all documents from every case, including written copies of the indictment and decisions, if the case is public in nature and the public has a legitimate interest as set out in article 75.1(c) and article 77.3 of the Criminal Procedure Code. This does not include cases involving minors and those cases which are exceptions to the public nature of proceedings as set out in article 76.1 of the Criminal Procedure Code.
5. The court should properly archive all cases that have been processed.
6. The National Parliament must collaborate better with the courts to avoid impediments to legal proceedings involving members of the government or the National Parliament who have legal immunity.
7. The National Parliament and the government should consult each other regarding the drafting of laws or amending legislation to avoid confusing the public, for example in the case of the amendments to the Law on Private Lawyers and their Training.
8. The budget for each court should better reflect the reality of the conditions faced by each court.
9. The government must examine the condition of accommodation for court clerks in each district court to ensure that they are able to carry out their duties comfortably.
10. The government must establish closed circuit television (CCTV) and a metal detector in each court to control security at the courts and to protect court facilities.

11. The court should organise effective coordination with the PNTL to provide adequate security to court clerks who are executing court orders in the community.
12. The National Parliament should issue official documents such as draft laws and laws in Tetum to facilitate understanding by everyone.
13. The court should issue official documents such as written decisions in Tetum to facilitate understanding by everyone, particularly the affected parties, such as victims and defendants.
14. The Penal Code should have a specific provision on the crime of incest that applies irrespective of the victim's consent or age.

ANNEX – STATISTICS

A. Types of cases monitored by JSMP in 2012

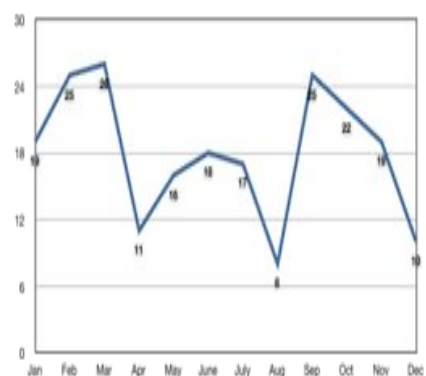
Case type	Number
Simple offences against physical integrity involving domestic violence - article 145	124
Simple offences against physical integrity - article 145	92
Mistreatment of a spouse - article 154	19
Sexual abuse of a minor - article 177	16
Corruption - article 292 – 302	15
Domestic violence – no specific charge	14
Homicide - article 138	13
Serious offences against physical integrity - article 146	12
Rape - article 172	12
Property damage - article 258	11
Attempted homicide - article 23, article 138	10
Aggravated homicide - article 139	10
Larceny - article 251	8
Aggravated larceny - article 252	6
Manslaughter - article 140	6
Aggravated property damage - article 259	5
Illegal gambling - article 322	5
Robbery - article 253	5
Sexual acts with an adolescent - article 178	4
Attempted rape - article 23, 172	4
Infanticide- article 142	3
Mistreatment of a minor - article 155	3
Aggravated rape - article 172, 173	3
Appropriation through abuse of trust - article 256	2
Threats - article 157	2
Hazardous driving - article 209	2
Serious offences against physical integrity involving domestic violence - article 146	2
Aggravated homicide involving domestic violence - article 139	2
Aggravated appropriation through abuse of trust - article 257	1
Attempted sexual abuse of a minor - article 23, 177	1
Criminal association - article 188	1
Fraud - article 266	1
Property damage with use of violence - article 260	1
Drunkenness and intoxication - article 212	1
Illegal import and export of goods or merchandise - article 315	1
Aggravated forgery - article 304	1
Forgery of documents or technical report - article 303	1
Tax fraud - article 314	1
Voter fraud - article 237	1
Serious coercion - article 159	1
Counterfeiting of currency - article 307	1
Crime against flora or fauna - article 217	1
Crime against humanity	1
Unlawful electoral canvassing - article 233	1
Negligent offences against physical integrity - article 148	1
Attempted homicide and arson - article 23, 139, 263	1
Human trafficking - article 163	1
Attempted aggravated rape - article 23, 172, 173	1
Total	430

B. Types of civil cases monitored by JSMP in 2012

Type	Number
Land / house dispute	5
Divorce	2
Child support	1
House rental	1
Total	9

C. Cases monitored by JSMP in 2012 – by court

Court	Criminal cases	Civil cases
Baucau	97	1
Dili	162	6
Oe-Cusse	49	0
Suai	116	2
Other	6	0
Total	430	9



D. Case statistics from the Dili District Court - 2012

Criminal cases													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2011	1048	1108	1166	1180	1176	1182	1201	1196	1177	1149	1138	1125	1048
New cases	82	101	87	39	66	68	62	27	51	68	47	15	713
Tried	22	43	73	43	60	49	67	46	79	79	60	40	661
Total pending	1108	1166	1180	1176	1182	1201	1196	1177	1149	1138	1125	1048	1100

Civil cases													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2011	353	354	353	252	361	361	346	342	351	355	364	363	353
New cases	9	9	17	14	10	13	6	13	16	31	16	116	170
Tried	8	10	18	5	10	28	10	4	12	22	17	4	148
Total pending	354	353	352	361	361	346	342	351	355	364	363	375	375

E. Case statistics from the Baucau District Court - 2012

Criminal cases	
Pending from 2011	110
New cases	204
Tried	139
Total pending	175

Civil cases	
Pending from 2011	66
New cases	38
Tried	14
Total pending	90

F. Case statistics from the Oe-Cusse District Court - 2012

Criminal cases	
Pending from 2011	Unknown
New cases	306
Tried	246
Total pending	60

Civil cases	
Pending from 2011	Unknown
New cases	56
Tried	18
Total pending	38

G. Case statistics from Suai District Court - 2012

Criminal cases	
Pending from 2011	Unknown
New cases	196
Tried	140
Total pending	200

Civil cases	
Pending from 2011	Unknown
New cases	18
Tried	14
Total pending	39



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.



Working together to create a strong and fair justice system for all Timorese.