

Law Against Domestic Violence

Obstacles to implementation three years on



**JUDICIAL SYSTEM
MONITORING
PROGRAMME**



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2008-2014



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Judicial System Monitoring Programme (JSMP)

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Law Against Domestic Violence

Obstacles to implementation three years on

Executive Summary

The Law Against Domestic Violence, Law No.7/2010 (LADV) was promulgated in Timor-Leste on 7 July 2010. The LADV is intended to provide a legal framework to effectively prosecute cases of domestic violence, as well as to prevent domestic violence and provide assistance to victims. Importantly, the LADV recognises domestic violence as a public crime. This is intended to send a clear message to the community that domestic violence is unacceptable and ensure all cases are brought before the courts.

Laws such as the LADV can contribute to reducing domestic violence in a community, however it can only be effective if implemented properly by all responsible parties. This report examines the implementation of the LADV with a focus on the charging, prosecution, sentencing and execution of sentences in domestic violence cases.

Over three years since the promulgation of the LADV, JSMP has monitored 352 cases of domestic violence in the four district courts (Dili, Baucau, Suai and Oecusse). Domestic violence cases represent 35 percent (35%) of all cases monitored by JSMP in the last three years, which is the single biggest category of criminal cases monitored by JSMP.

While domestic violence can occur against any family member, regardless of sex, age or background, the overwhelming majority of cases of domestic violence are perpetrated against women by their husbands or intimate partners. Out of the total of 352 domestic violence cases monitored by JSMP during this period, only 20 cases or six percent (6%) involved female perpetrators. This data indicates that domestic violence is the most common form of violence against women in Timor-Leste.

Pursuant to the LADV and the Penal Code, Decree Law No. 19/2009, cases of domestic violence can be charged under a number of different offences in the Penal Code. However, JSMP court monitoring found that the majority of domestic violence cases (71% of cases monitored by JSMP) are being charged by the public prosecutor as a simple assault under article 145 of the Penal Code. The report concludes that the charging of domestic violence cases often do not reflect the nature and seriousness of domestic violence. In particular, prosecutors should carefully consider all evidence of previous incidents of violence in the relationship, the full extent of the injuries suffered by the victim, and the existence of aggravating factors such as the use of a weapon, to ensure that an appropriate charge which offers the greatest maximum penalty is applied.

JSMP court monitoring statistics show that since the promulgation of the LADV, the courts are suspending the execution of a prison sentence or substituting a prison sentence for a fine in the majority of cases where the defendant has been found guilty. Of the decisions monitored by JSMP in the three years since the promulgation of the LADV, 52 percent (52%) have been suspended sentences and a further 24 percent (24%) of all known decisions resulted in the issuing of a fine to the perpetrator. While the courts must always give preference to a non-custodial sentence where the law provides for an alternative penalty, the report concludes that there must be a mechanism to monitor compliance with suspended sentences and fines if they are to have any deterrent value and promote behavioural change.

Further, where prison sentences are suspended, the court should consider imposing additional conditions or rules of conduct such as an order that the perpetrator makes a public apology to the victim or regularly appear before community leaders to confirm that he has changed his behaviour. Monitoring of the perpetrator by authorities, such as the police, during the period of suspension should also be considered to prevent the perpetrator from reoffending. These sentencing options are available under the current legislation, however there needs to be effective execution and monitoring arrangements in place so that the courts can be confident that their orders will be properly implemented in the community.

JSMP court monitoring has found that the courts rarely order civil compensation to victims of domestic violence. Between July 2010 and June 2013, JSMP only monitored five domestic violence cases where the court ordered that the perpetrator pay compensation to the victim. Compensation for loss and damage resulting from a crime is obligatory under the Penal Code and should be assessed by the court under rules provided for under the Civil Code, Law No. 10/2011. The report concludes that in cases of domestic violence, compensation can be particularly powerful as it could address economic dependency of the victim on the perpetrator and provide immediate remedy for victims. In all cases, civil compensation must be given priority over the payment of fines to the State and not be a substitute for criminal penalties, such as a prison sentence.

Finally, the report found that protection orders removing the suspected perpetrator from the family home during the investigation and trial phases are not being applied in domestic violence cases. JSMP has not monitored a single case in which a protection order has been applied under article 37 of the LADV. This has serious implications for the safety of the victim,

and often means that the victim is forced to live in a temporary shelter for many months while the case is being processed by the formal legal system. Protection orders are among the most effective legal remedies to protect women from domestic violence and should be actively pursued by the prosecutor, together with an order for provisional alimony under article 32 of the LADV.

Recommendations

In response to these findings JSMP makes the following recommendations:

- 1** The Public Prosecution Service should develop legal guidelines on charging in domestic violence cases. The legal guidelines should clarify that repeated violence is not a pre-requisite for charging an offender with mistreatment of a spouse under article 154 of the Penal Code. The legal guidelines should also provide examples of cases where article 146 of the Penal Code on serious assault should be applied. The use of weapons should always be considered an aggravating factor which increases the perpetrator's culpability and is evidence of intent to cause serious injury to the victim.
- 2** The Public Prosecution Service should always conduct a risk-assessment in all domestic violence cases in order to determine whether a protection order under article 37 of the LADV is required to protect the victim during the investigation and trial process. The public prosecutor should at the same time apply for a court order requiring the defendant to provide provisional alimony under article 32 of the LADV, if the victim requires financial support.
- 3** Courts should develop sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic violence. The sentencing guidelines should clearly outline the general sentencing principles, aggravating and mitigating factors using examples, rules for sentencing repeat offenders, guidance on all alternative penalties available under the law and provisions for calculation of civil compensation in cases of domestic violence. The sentencing guidelines should also promote orders aimed at changing the perpetrator's behaviour, such as an order to make a public apology, make reparations, attend intervention programmes or be subject to supervision by a competent authority. The sentencing guidelines should also provide examples of where protection orders under article 38.2 of the LADV will be necessary to protect the victim after a sentence is handed down.
- 4** The courts should make an order on civil compensation for the victim in all domestic violence cases. Compensation should provide reparation to the victim for not only physical injuries, but emotional distress and any loss of earnings as a result of the injuries inflicted by the perpetrator. The courts must ensure civil compensation is prioritised over the issuing of a fine.

- 5 The government should allocate sufficient resources to the Public Prosecution Service and the Timor-Leste National Police (*Polísia Nasionál Timor-Leste*) (PNTL) to ensure that all court sentences in domestic violence cases are effectively executed and monitored. At a minimum, the police should have current records of all persons convicted with a suspended sentence. The Public Prosecution Service and the police should also have clear procedures in place to ensure that the perpetrator complies with any conditions or rules of conduct attached to his suspended sentence.
- 6 The government should give funding to agencies and NGOs to provide intervention programmes to perpetrators of domestic violence in order to influence behavioural change. Direct funding should be given to establish or widen existing counseling services, anger management courses, drug and alcohol treatment, and other tailored programmes for offenders.
- 7 The government should establish a social reintegration service to monitor convicted persons during the term of the suspension of a prison sentence and facilitate community service orders and participation in intervention programmes. The design of the service should build on existing community structures, such as suco councils (village councils), community police and local leaders.

1. Introduction

The Judicial System Monitoring Programme (JSMP) is publishing this report in response to the three year anniversary of the promulgation of the Law Against Domestic Violence (LADV). The aim of this report is to review the implementation of the LADV in Timor-Leste, particularly in relation to the charging, sentencing and execution of sentences in domestic violence cases. This report is based on three years of data from JSMP's court monitoring work, between July 2010 and June 2013 (inclusive), case studies and interviews with justice sector actors.

While domestic violence can occur against anyone regardless of sex, age or background, the overwhelming majority of victims are women and the perpetrators are their spouses or intimate partners. Domestic violence is the most common form of violence against women in Timor-Leste. Over a third of women in Timor-Leste experience physical violence, and almost 45 percent (45%) of married women have experienced physical violence from their intimate partner or someone else.¹ These statistics are likely to under-represent the actual prevalence of domestic violence in the community, particularly sexual violence in the family context. Domestic violence is often a hidden problem, where victims may themselves be unable to recognise violence perpetrated against them as a crime or unable to seek help to end the violence. For example, the 2010 Demographic Health Survey for Timor-Leste found that 85 percent (85%) of women experiencing physical violence had sought no help.²

The LADV is intended to establish a legal framework to prevent domestic violence and provide assistance to victims.³ Importantly, the LADV recognises domestic violence as a public crime. This is intended to send a clear message to the community that domestic violence is unacceptable and ensure all cases are brought before the courts. Laws such as the LADV can contribute to reducing domestic violence in a community – through making it a crime and attaching penalties to punish and deter perpetrators, and by establishing mechanisms to protect and assist victims. However, such laws are only effective if implemented properly by all responsible parties, particularly the police, prosecutors, courts and service providers.

¹ Angela Taft and Lyndsey Watson, 'Violence against women in Timor-Leste – Secondary analysis of the 2009-10 demographic health survey – Final report' (2013) at 19: <<http://arrow.latrobe.edu.au:8080/vital/access/manager/Repository/latrobe:34907;jsessionid=BD8A40B166FCB3FB2B5FC2CAF8684471>>. This report refers to 'ever-married women' – women who have been previously married or currently married. For ever-married women who have experienced violence, 75% have experienced violence from their intimate partner.

² Above n1 at 44.

³ Article 1 of the LADV.

Scope of the report

This report reviews the implementation of the LADV in Timor-Leste over the past three years, particularly in relation to the charging, sentencing and execution of sentences in domestic violence cases. It draws on data from JSMP court monitoring over July 2010 and June 2013, data from the Vulnerable Person's Unit (VPU) of the National Police of Timor-Leste (*Polísia Nasionál Timor-Leste*) (PNTL), case studies and interviews with justice sector actors.

JSMP monitors court proceedings in the four district courts through two units, the Legal Research Unit and the Women's Justice Unit. The Legal Research Unit monitors a random selection of cases daily, depending on the court schedule and access to the hearing.⁴ Court monitors from the Legal Research Unit are based in Dili, Baucau and Suai, and conduct monitoring visits to Oecusse District Court on average once a month for one week. The Women's Justice Unit monitors only gender-based violence cases in Dili, and also conducts monitoring visits to the other district courts. In some cases, a court monitor from the Legal Research Unit and the Women's Justice Unit will monitor the same case. However, the monitoring records used in this report have been audited so that there is no duplication in the case records.

JSMP court monitors attend hearings and record information regarding the indictment, testimony, oral allegations and the final sentence, as well as general observations of the proceedings. JSMP does not monitor all cases heard by the district courts. In some cases, JSMP has been unable to monitor the final sentencing. For this report, JSMP sought to obtain court records of decisions in cases that it began monitoring but on which it did not record a final decision. The Dili District Court permitted access to information on some of these cases, however JSMP was not able to access records of decisions from the other district courts.

While JSMP does not monitor all cases heard by the district courts, we believe that the monitoring records used in this report represent an unbiased sample of the cases reaching the four district courts. In the future, publication of official statistics from the courts and the Public Prosecution Service on domestic violence cases will be essential to continue monitoring the implementation of the LADV.

Terminology used in this report

In this report, the term 'domestic violence' is used as defined by articles 2 and 3 of the LADV. Where cases or crimes of domestic violence are referred to in this report, it refers only to cases that fall within the definition of 'a crime of domestic violence' under article 35 of the LADV.

⁴ In many cases involving rape or sexual abuse of a minor, JSMP will be refused access to monitor the hearing.

Where this report refers to 'incest', it is defined as in JSMP's report on 'Incest in Timor-Leste: An unrecognised crime':⁵

"a crime of incest is defined as sexual acts that take place between the offender and his or her child or parent, grandchild or grandparent, brother or sister, or half brother or sister. This definition includes parents or siblings who are step relations or relations through legal adoption."

This report does not include rape or sexual abuse of a minor perpetrated by an uncle, cousin or other non-direct line descendant family member as a case of incest.

⁵ JSMP, 'Incest in Timor-Leste: An unrecognised crime' (2012) at 5: <www.jsmp.tl>.

2. Law Against Domestic Violence (Law No. 7/2010)

2.1 Background

Before the promulgation of the LADV in 2010, the majority of domestic violence cases that were reported to the police were being mediated informally within the family or community, or mediated by the courts. For example, over two months of monitoring in the Dili District Court (September—November 2003), JSMP found that no domestic violence cases had been scheduled for a hearing before the court. This was despite a high number of domestic and sexual violence cases – 361 cases – being registered by the VPU in 2003.⁶

Between 2003 and 2005, JSMP found that the majority of domestic violence cases were not reaching the courts due to a number of factors. Most significantly, victims were actively discouraged at every stage of the legal process from proceeding with the case to court. Some police officers were reportedly discouraging women from reporting ‘minor’ incidents of domestic violence. In other cases, police officers referred complaints of domestic violence back to the family to be resolved, or to the informal processes of conflict resolution (adat).⁷

The majority of victims were also approaching the public prosecutor to withdraw their cases. For example, between January and August 2003, 104 out of 148 domestic violence cases reported to the Dili District VPU were withdrawn by victims after receiving the public prosecutor's approval to withdraw. Public Prosecutors themselves were also referring cases back to the family or community for informal resolution rather than prosecuting the cases in court.⁸ Where cases reached the courts, they were often mediated. Between 2010 and 2012, JSMP monitored 10 domestic violence cases that were closed by the courts because it was deemed that the parties had already reconciled and the case had occurred before the promulgation of the LADV.

Such treatment of domestic violence cases by the police, the public prosecutor and the courts reinforced the perception of domestic violence as being a minor ‘family problem’ rather than a crime. Victims who did report domestic violence to the police were not supported with proceeding with their complaint through the formal justice system.

⁶ JSMP, ‘Women in the formal justice sector, report on the Dili District Court’ (2010) at 12: <www.jsmp.tl>.

⁷ JSMP, ‘Statistics on cases of domestic violence against women in Timor-Leste’ (2005) at 9: <www.jsmp.tl>.

⁸ Above n6 at 9-10.

2.2 Promulgation of the Law Against Domestic Violence

In this context, the LADV was promulgated on 7 July 2010 to respond more effectively to the problem of domestic violence in Timor-Leste.

Domestic violence is broadly defined by the LADV as any act committed by a family member against another family member, where there is a relationship of ascendancy (for example physical or economic) in the family relationship or where there is an intimate relationship between one person and the other, that results or could result in physical, sexual, economic or psychological injuries or suffering.⁹

For the purposes of the LADV, 'family' is defined to include:¹⁰

- spouses and former spouses;
- people who live or have lived in circumstances analogous to spouses, even if without cohabitation (de facto spouses and former de facto spouses);
- relatives in the ascending and descending line of one or both spouses or de facto spouses, as long as they are part of the same context of dependency or household economy; and
- any other person who is part of the same context of dependency or household economy, including any person who carries out an activity in the household continuously and with a subordinated status.

Article 35 of the LADV defines crimes of domestic violence by reference to the Penal Code to only include the following specific crimes:

- mistreatment of a disabled person (article 153), mistreatment of a spouse (article 154), mistreatment of a minor (article 155) and aggravated forms of these offences (article 156); and
- homicide (article 138), aggravated homicide (article 139), termination of pregnancy (article 141), simple assault (article 145), serious assault (article 146), torture (article 167), sexual coercion (article 171), rape (article 172), child prostitution (article 175), sexual abuse of a minor (article 177), sexual acts with an adolescent (article 178) and sexual abuse of a person incapable of resistance (article 179) – only if committed in circumstances of domestic violence as defined in articles 2 and 3 of the LADV.

Offences such as threats, coercion and serious coercion (articles 157-159), or property damage (article 258) cannot be prosecuted as a crime of domestic violence even if they occur in the family context as these offences are not included in article 35 of the LADV.

⁹ Article 2 of the LADV.

¹⁰ Article 3 of the LADV.

Importantly, the LADV makes all crimes of domestic violence a 'public crime', meaning that the victim does not have to personally file a complaint for the crime to be investigated and prosecuted.¹¹ Once the police is made aware of a crime of domestic violence, whether from the victim, another person or their own direct observation, the officer must immediately prepare a report on the case for the public prosecutor.¹² At the conclusion of the investigation by the prosecutor or the police, the prosecutor will prepare an indictment unless there is insufficient evidence, if the perpetrator of the crime remains unknown, or if proceedings are legally inadmissible.¹³ Once a case of domestic violence reaches court hearing, the court cannot mediate the case as it is a public crime.¹⁴

This means that domestic violence cases occurring after 7 July 2010 must not be referred back to the family or community for mediation. Unlike what had been occurring prior to the promulgation of the LADV, the police and the public prosecutor cannot refer cases back to the family or community for informal resolution, and the courts also cannot mediate the case once it reaches hearing. This is an important step in ensuring that domestic violence is treated as a serious crime rather than a personal matter only to be resolved within the family or community.

¹¹ Article 36 of the LADV. For the definition of 'public crime' see article 106.2 of the Penal Code which states: "Public crimes are those the criminal prosecution of which does not depend on a complaint being filed."

¹² Article 211.1 of the Criminal Procedure Code, Decree Law No. 13/2005.

¹³ Article 235 of the Criminal Procedure Code.

¹⁴ The court can attempt conciliation in cases of semi-public crimes, see article 262 of the Criminal Procedure Code.

3. JSMP court monitoring statistics

3.1 Number of domestic violence cases reaching the courts

Over three years since the promulgation of the LADV on 7 July 2010, JSMP has monitored 352 cases of domestic violence in the four district courts (Dili, Baucau, Suai and Oecusse). Domestic violence cases represent 35 percent (35%) of all cases monitored by JSMP in the last three years, which is the single biggest category of criminal cases monitored by JSMP. The overwhelming majority of these cases involve female victims. Out of the total of 352 domestic violence cases monitored during this period, only 20 cases or six per cent (6%) involved female perpetrators.

Table 1. Number of domestic violence cases monitored by JSMP, July 2010—June 2013

	2010	2011	2012	2013	Total
Number of DV cases monitored	6	70	166	110	352
Other cases monitored	44	213	263	131	651
Total	50	283	429	241	1003

Chart 1. Percentage of domestic violence cases from total cases monitored by JSMP, July 2010—June 2013

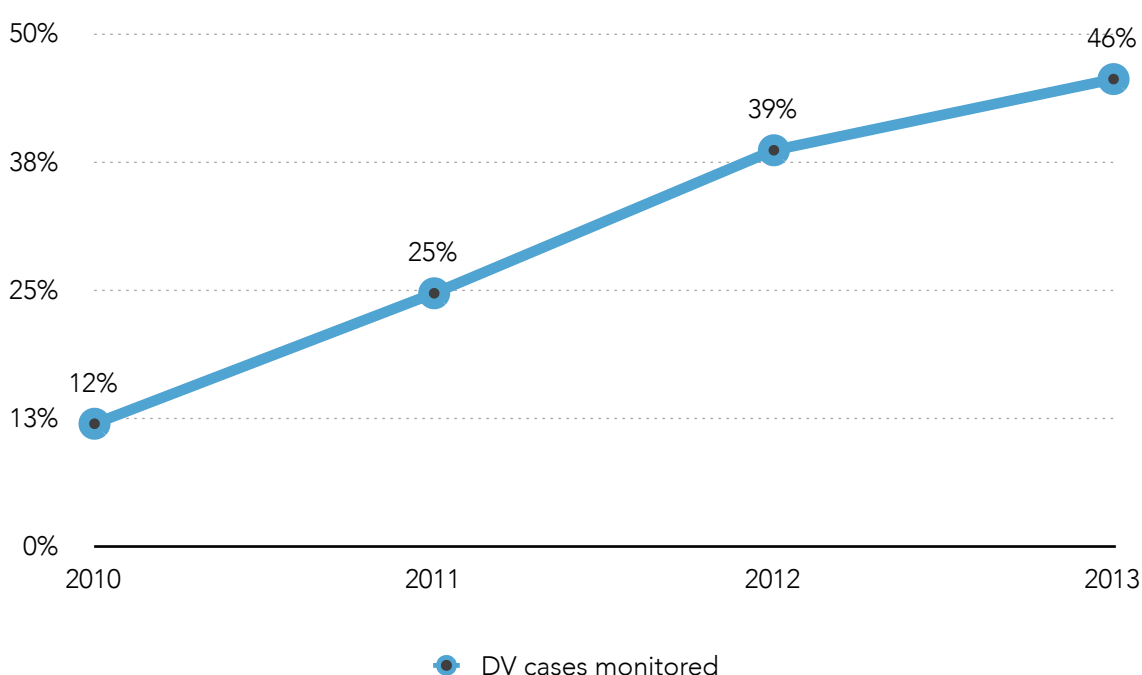
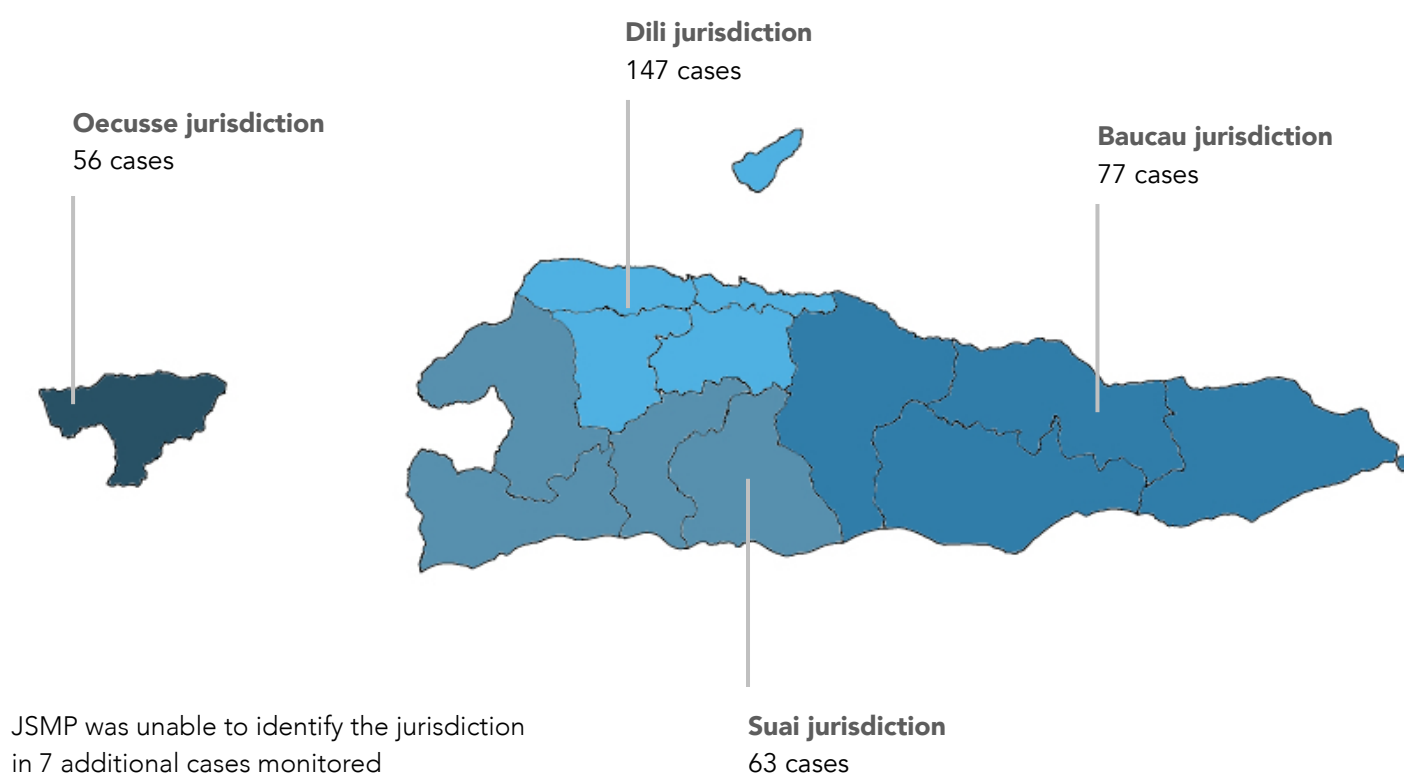


Table 2. Number of male versus female defendants in domestic violence cases monitored by JSMP, July 2010—June 2013

	Total	Percentage
Female perpetrators	20	6%
Male perpetrators	332	94%
Total	352	100%

The jurisdiction with the highest number of domestic violence cases reaching the court was Dili, with almost double the number of cases of Baucau jurisdiction. According to JSMP's monitoring, the Baucau, Suai and Oecusse district courts recorded similar numbers of domestic violence cases over the 3 years.

Map 1. Domestic violence cases monitored by JSMP, by jurisdiction, July 2010—June 2013

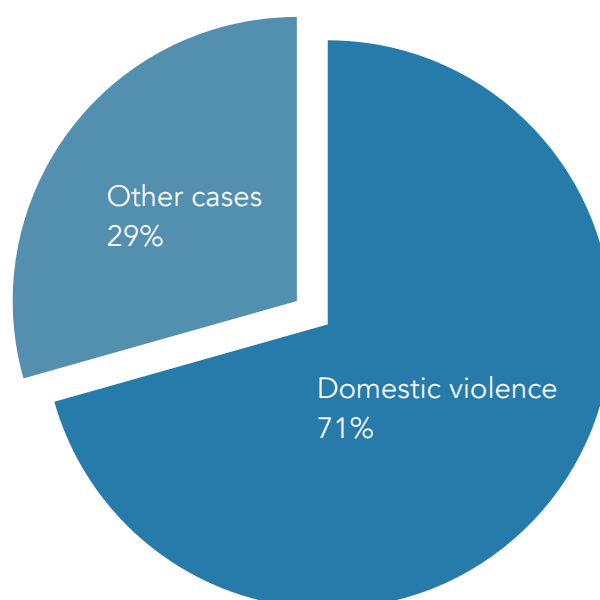


In comparison, the VPU statistics for January 2010–September 2013 show that they registered 2,467 cases of domestic violence. These cases were registered as mistreatment of a spouse or mistreatment of a minor. The 2013 statistics up to September do not appear reliable as they only record 71 mistreatment of a spouse cases. This deviates remarkably from previous years.

Table 3. Number of domestic violence cases registered by VPU, January 2010—September 2013

Case type	2010	2011	2012	2013	Total
Mistreatment of a spouse	629	589	399	71	1,688
Mistreatment of a minor	23	-	27	4	54
Other cases	294	166	238	27	725
Total	946	755	664	102	2,467

Chart 2. Percentage of domestic violence cases from total cases registered by VPU, January 2010—September 2013

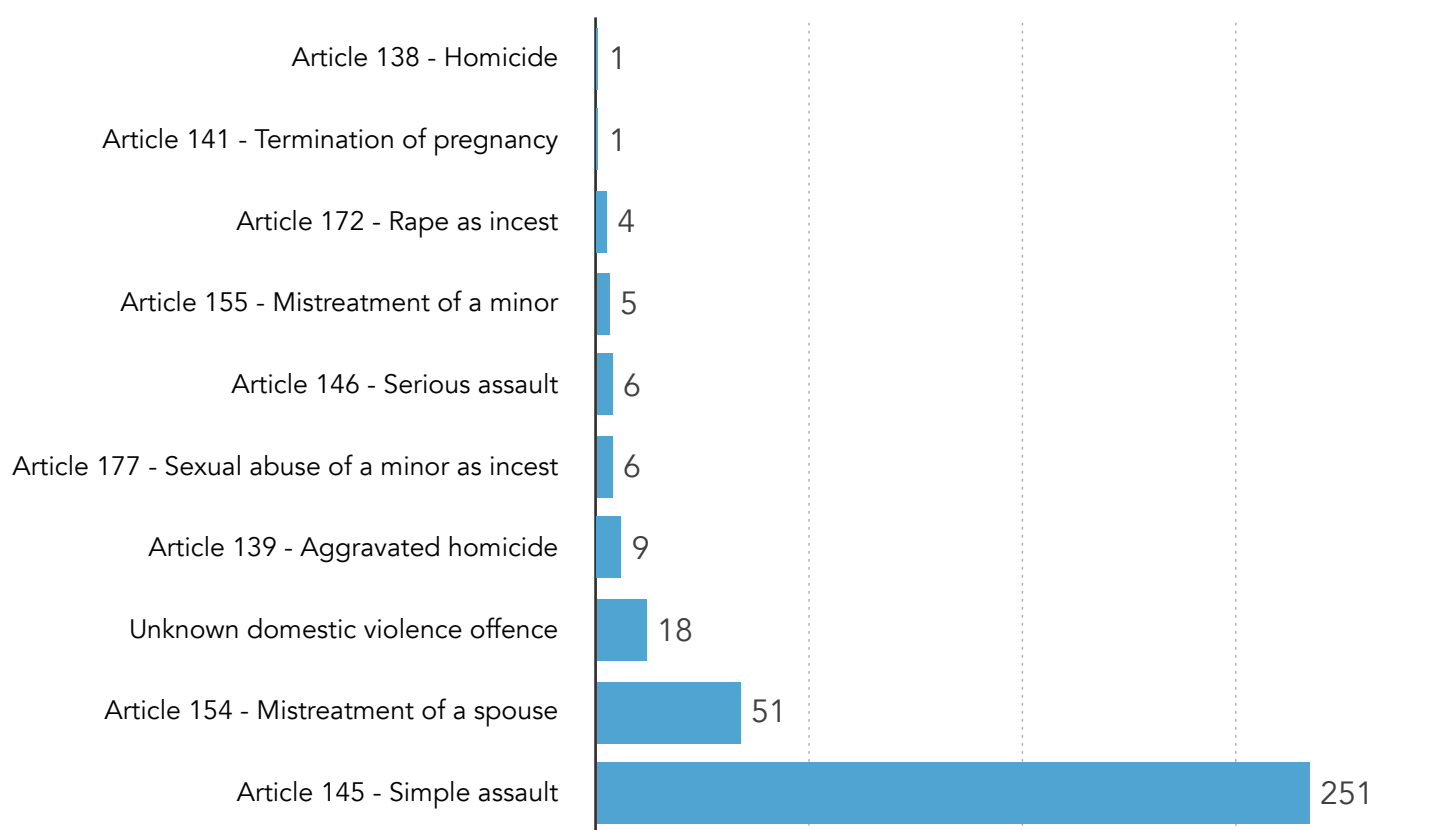


JSMP's court monitoring statistics since the promulgation of the LADV in July 2010 demonstrate a dramatic change from the situation in 2003—2005, where very few domestic violence cases were reaching trial. These statistics show that the LADV has had a significant impact in directing more cases of domestic violence to the courts. While the VPU data is questionable, together with JSMP court monitoring statistics, it suggests that domestic violence continues to be the single biggest category of crime committed in Timor-Leste.

3.2 Charging of domestic violence offences

Common forms of physical acts of domestic violence experienced by women in Timor-Leste are being slapped, punched, pushed, kicked, dragged, hit with an object or choked.¹⁵ Types of physical injuries typically caused range from bruises, cuts, deeper wounds requiring stitches, broken teeth, broken bones to more serious injuries requiring hospitalisation. Psychological abuse such as humiliation, insulting and controlling behaviour, is also common. JSMP has also monitored 10 cases of incest, however this is likely to represent only a small fraction of the actual extent of such abuse in the community.¹⁶ Between July 2010 and July 2013, JSMP monitored 10 cases of spousal murder (homicide and aggravated homicide), representing 15 percent (15%) of all murder cases monitored by JSMP during this period. The following chart and table shows the breakdown of domestic violence offences that JSMP has monitored in the courts since the promulgation of the LADV.

Chart 3. Charging in domestic violence cases monitored by JSMP, July 2010—June 2013



¹⁵ Based on JSMP court monitoring and research conducted by the International Rescue Committee (IRC) in Vijaya Joshi and Maggie Haertsch, 'Prevalence of Gender-Based Violence in East Timor', (2003).

¹⁶ As discussed in the JSMP report 'Incest in Timor-Leste: An unrecognised crime' (2012) at 7, limited access to the formal justice system, strong preference for dealing with abuse within families outside of the formal justice system except in the most extreme circumstances, and fear and control exerted by the perpetrator, mean that most incidences of child abuse in Timor-Leste go unreported. According to organisations working for the protection of women and children's rights, incest is a frequent occurrence.

Table 4. Charging in domestic violence cases monitored by JSMP, July 2010—June 2013

Offence	2010	2011	2012	2013	Total	% from total
Article 138 - Homicide	0	1	0	0	1	0.3%
Article 139 - Aggravated homicide	0	3	2	4	9	2.6%
Article 141 - Termination of pregnancy	0	1	0	0	1	0.3%
Article 145 - Simple offences against physical integrity	6	31	124	90	251	71.3%
Article 146 - Serious offences against physical integrity	0	4	0	2	6	1.7%
Article 154 - Mistreatment of a spouse	0	18	20	13	51	14.5%
Article 155 - Mistreatment of a minor	0	2	3	0	5	1.4%
Article 172 - Rape as incest	0	3	1	0	4	1.1%
Article 177 - Sexual abuse of a minor as incest	0	3	2	1	6	1.7%
Unknown domestic violence offence	0	4	14	0	18	5.1%
Total	6	70	166	110	352	100.0%

JSMP court monitoring statistics show that 71 percent (71%) of all domestic violence cases were charged as a simple assault (simple offences against physical integrity) under article 145 of the Penal Code. Fifteen percent (15%) of all domestic violence cases monitored were charged as mistreatment of a spouse under article 154 of the Penal Code and only two percent (2%) as a serious assault (serious offences against physical integrity) under article 146 of the Penal Code. As noted above, the VPU does not register cases under article 145 or article 146 – all domestic violence cases other than mistreatment of a minor appear to be initially registered by the police as mistreatment of a spouse under article 154 of the Penal Code. It is when the case reaches the public prosecutor that a specific offence is recorded in the indictment against defendant.

3.3 Sentencing in domestic violence cases

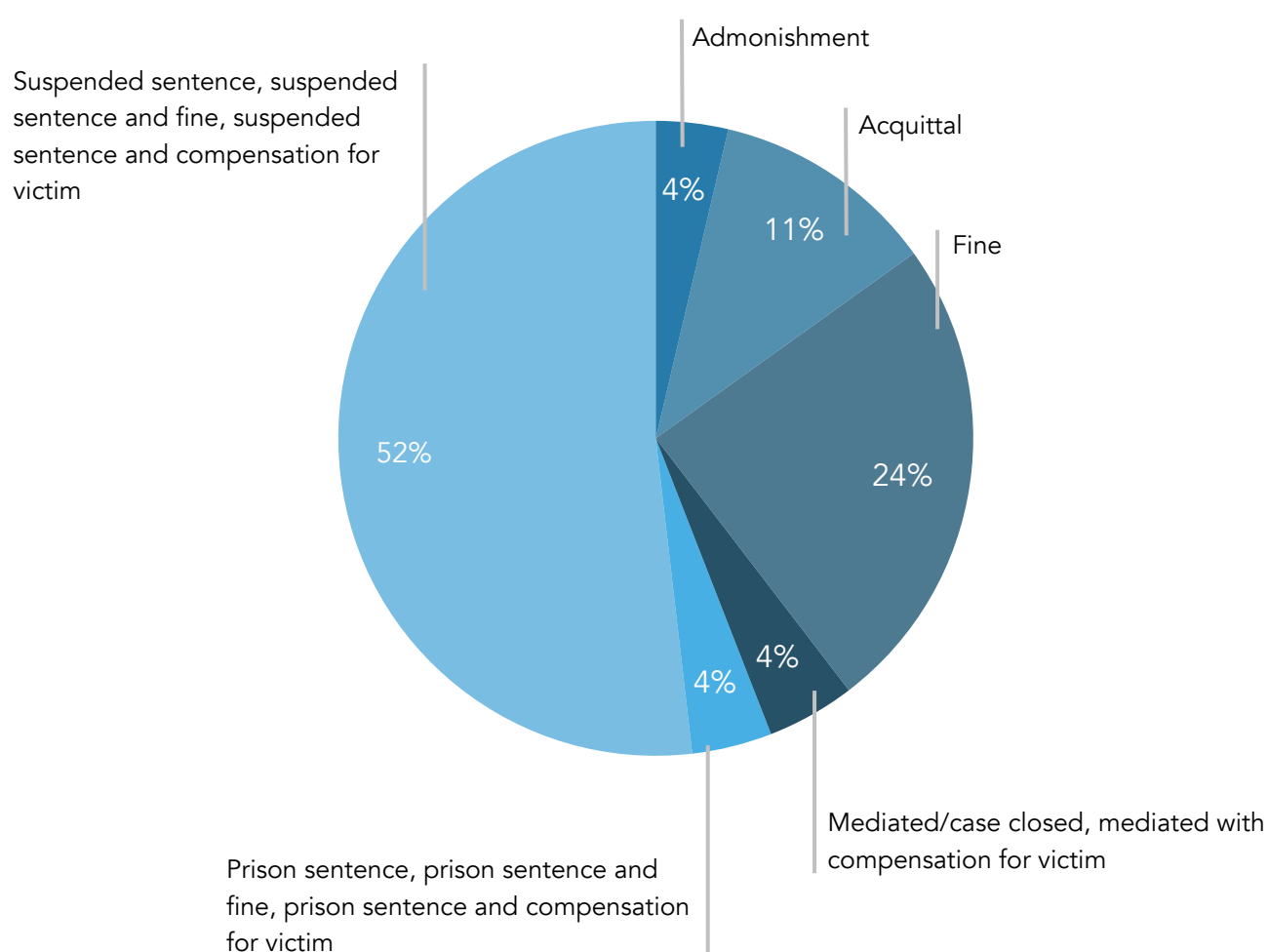
The Penal Code provides for a number of sentencing options in addition to a prison sentence where the defendant has been found guilty of the crimes charged. Article 67 of the Penal Code provides that a court may substitute a prison sentence not exceeding 12 months with a fine. Article 68 provides that the court can suspend a prison sentence not exceeding three years. Suspension may be applied on condition that the perpetrator perform certain duties, (article 69), or comply with certain rules of conduct (article 70), or be subject to monitoring by 'reintegration services' (article 71). Suspended sentences and additional remedies available under the law will be discussed further in Part 4.

Table 5. Decision status of domestic violence cases monitored by JSMP, July 2010—June 2013

Decision	2010	2011	2012	2013	Total	% from total
Admonishment	0	0	5	4	9	2.6%
Acquittal	0	11	10	7	28	8.0%
Unknown	0	27	48	32	107	30.4%
Fine	0	3	33	24	60	17.0%
Mediated/case closed	1	4	5	0	10	2.8%
Mediated with compensation for victim	1	0	0	0	1	0.3%
Prison sentence	1	1	2	3	7	2.0%
Prison sentence and fine	1	0	0	0	1	0.3%
Prison sentence and compensation for victim	0	2	0	0	2	0.6%
Suspended sentence	2	20	63	39	124	35.2%
Suspended sentence and fine	0	1	0	0	1	0.3%
Suspended sentence and compensation for victim	0	1	0	1	2	0.6%
Total	6	70	166	110	352	100.0%

JSMP court monitoring shows that the majority of domestic violence cases reaching the courts are being given a suspended sentence under article 68 of the Penal Code. Only one case monitored by JSMP resulted in a suspended sentence with a condition that the perpetrator not contact the victim for three years.¹⁷ Table 5 above shows the decisions handed down in all domestic violence cases monitored by JSMP between July 2010 and June 2013. 'Unknown' refers to cases that JSMP commenced monitoring in the courts, however was unable to monitor the final decision and was not given access to copies of court records on the decision.¹⁸

Chart 4. Decision status of domestic violence cases monitored by JSMP excluding unknown decisions, July 2010—June 2013



¹⁷ Case number 357/C.Ord/2011/TDD, domestic violence involving article 145 (simple assault). The court sentenced the defendant to one year in prison, suspended for one year and six months with the condition that the defendant not contact the victim for three years.

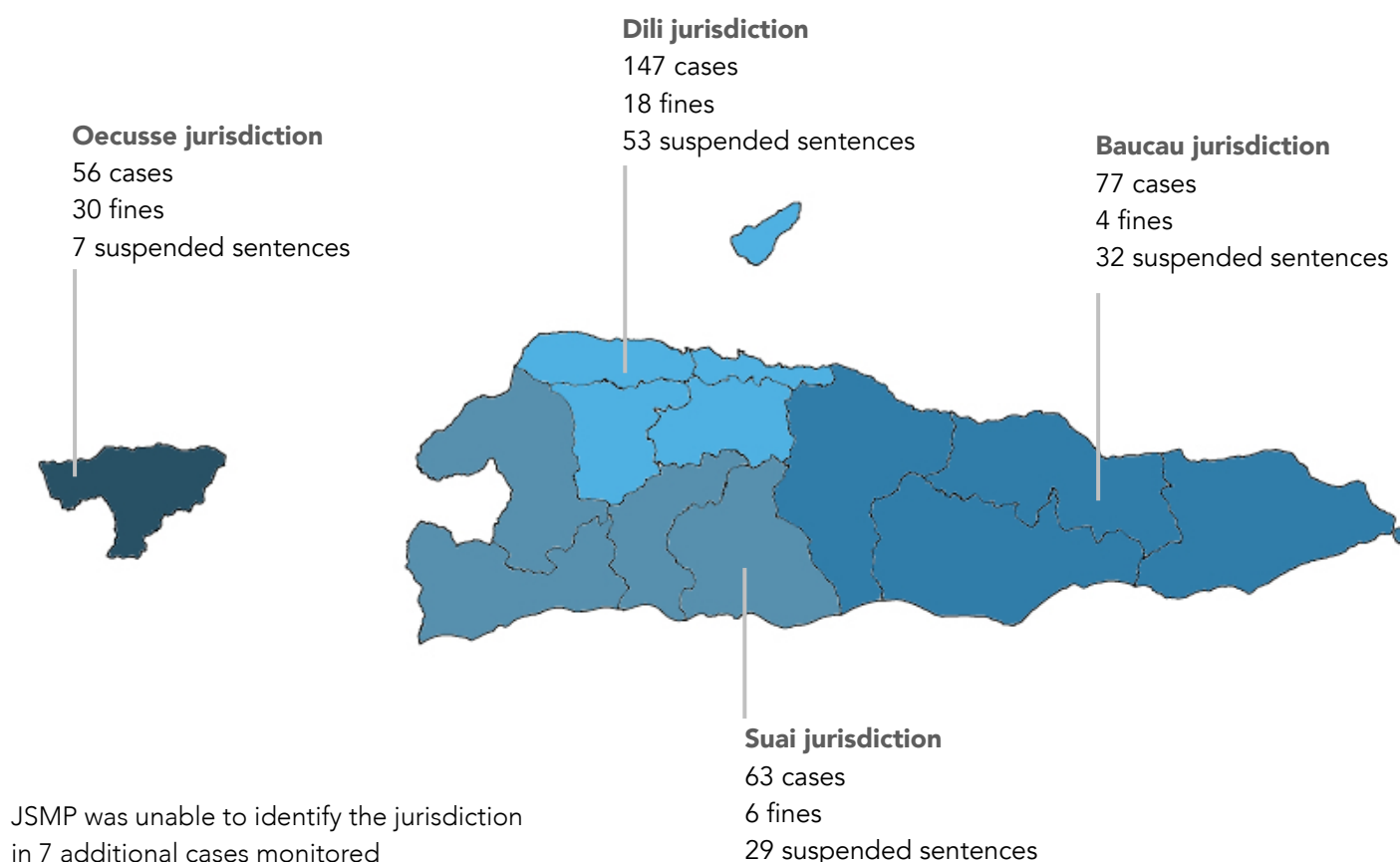
¹⁸ Under the principles of the Timor-Leste Constitution, the Criminal Procedure Code and article 24 of the Law of Administrative Procedure Decree Law No. 32/2008, decisions in criminal cases should be made public unless exceptional circumstances exist (for example, to protect the interest of children, to protect national security). JSMP is concerned with the continuing difficulty that civil society organisations face in accessing court records.

When removing 'unknown' decisions from the statistics, it becomes very clear that the majority of domestic violence cases are being given a suspended sentence. In the three years since the promulgation of the LADV, 52 percent (52%) of all decisions monitored by JSMP have been suspended sentences. Fines paid to the State are also frequently handed down by the courts, with 24 percent (24%) of all known decisions resulting in the issuing of a fine to the perpetrator. For domestic violence cases involving article 145 (simple assault), 102 out of 251 cases monitored have resulted in a suspended sentence. When unknown decisions are excluded, suspended sentences represent 53 percent (53%) of all final decisions recorded by JSMP in article 145 cases.

It is also very clear that the courts are not awarding civil compensation to victims in cases of domestic violence. Under article 104 of the Penal Code, compensation for loss and damage resulting from a crime is obligatory and should be assessed by the court under rules provided for under the Civil Code. During the past three years, JSMP has only monitored five cases of domestic violence where the court has ordered that the perpetrator pay compensation to the victim.

Map 2 below shows the breakdown of sentencing by jurisdiction. It shows that the Oecusse District Court has issued more fines than any other district court, while the Dili, Baucau and Suai district courts have favoured issuing suspended sentences in domestic violence cases.

Map 2. Application of fines and suspended sentences in domestic violence cases monitored by JSMP, by jurisdiction, July 2010—June 2013



In relation to the length of the suspension of a prison sentence, JSMP statistics show that most prison sentences (63%) were suspended for a period of between 1–2 years. Only nine percent (9%) of prison sentences were suspended for a period longer than three years.

Table 6. Length of suspension of prison sentences in domestic violence cases monitored by JSMP, July 2010—June 2013 ¹⁹

Offence	< 1 year	1 - 2 years	2 - 3 years	3 - 4 years	4 - 5 years	Unkno- wn	Total
Article 141 - Termination of pregnancy				1			1
Article 145 - Simple offences against physical integrity	9	75	8			12	104
Article 146 - Serious offences against physical integrity		2					2
Article 154 - Mistreatment of a spouse		3	2	9	1	5	20
Total	9	80	10	10	1	17	127

Table 7. Length of prison sentences in domestic violence cases monitored by JSMP, July 2010—June 2013 ²⁰

Offence	< 1 year	< 3 years	3 - 6 years	6 - 10 years	10 - 15 years	> 15 years	Unkno- wn
Article 139 - Aggravated homicide					4	1	2
Article 145 - Simple offences against physical integrity	2						
Article 172 - Rape as incest				1			
Total	2	0	0	1	4	1	2

¹⁹ This table covers all cases which resulted in a suspended sentence (124), suspended sentence and fine (1), and suspended sentence with compensation for victim (2).

²⁰ This table covers all cases which resulted in a prison sentence, prison sentence and fine, and prison sentence with compensation for victim.

Table 7 above shows that between July 2010 and June 2013, JSMP monitored only 10 cases of domestic violence where a prison sentence was applied by the courts. These cases involved aggravated homicide (seven cases), rape as incest (one case), and only two cases of simple assault which resulted in a prison sentence which was not suspended.

3.4 Cases involving article 125 of Criminal Procedure Code

As a general rule, the court can oblige a witness to give testimony in a trial.²¹ However, article 125 of the Criminal Procedure Code, Decree Law No. 13/2005, states that where the witness is the spouse or a family member of the accused, she may lawfully refuse to give testimony.²² The Criminal Procedure Code does not provide guidance on whether this exception should apply in cases where the witness is also a victim of the crime, such as in all domestic violence cases. Between July 2010 and June 2013, JSMP monitored a total of 19 domestic violence cases in which the victim chose not to testify against the defendant. Out of the 19 cases, seven cases resulted in a acquittal.

Table 8. Decision status in domestic violence cases monitored by JSMP involving article 125 of the Criminal Procedure Code, July 2010—June 2013

Decision	2011	2012	Total
Acquittal	4	3	7
Fine	1	0	1
Suspended sentence	2	1	3
Unknown	7	1	8
Total	14	5	19

On 5 October 2011, the Court of Appeal in case number 80/CO/2011/TR determined that article 125 does not apply to victims of crimes committed by a partner or a family member, particularly for sexual crimes and domestic violence.

²¹ Article 122.1 of the Criminal Procedure Code.

²² Under article 125 of the Criminal Procedure Code, relatives who cannot be compelled to give evidence against a perpetrator include: spouse, child (including adopted), sibling, parent, grandparent, grandchild, aunt, uncle, niece or nephew. An ex-wife (or equivalent) or de facto current wife cannot be compelled to give evidence concerning events during their marriage/cohabitation.

Since this decision was handed down, JSMP has monitored a further five cases in 2012 (four in the Baucau District Court and one case in the Dili District Court) where the victim did not testify against the defendant based on article 125 of the Criminal Procedure Code. In three of the five cases, the defendant was acquitted. In one of these cases, the presiding judge gave directions to the victim that she could refuse to testify as the Court of Appeal decision on article 125 was not binding jurisprudence.²³ JSMP has only monitored a total of 28 acquittals in domestic violence cases during the past three years. This means 25 percent (25%) of all acquittals were in cases where the victim refused to testify.

3.5 Key findings

- Domestic violence is the single largest category of crime committed in Timor-Leste. Domestic violence cases represent 35 percent (35%) of all cases monitored by JSMP between July 2010 and June 2013.
- Men are overwhelmingly the perpetrators of domestic violence in Timor-Leste. In 94 percent (94%) of cases monitored by JSMP between July 2010 and June 2013, the perpetrator was male and the victim female.
- The LADV has had a significant impact in directing cases of domestic violence to the formal justice system for final sentencing by the courts. The percentage of domestic violence cases monitored by JSMP has increased steadily since July 2010.
- The majority of domestic violence cases are being charged by the public prosecutor as a simple assault under article 145 of the Penal Code. Of all domestic violence cases monitored by JSMP between July 2010 and June 2013, 71 percent (71%) were charged under article 145 of the Penal Code.
- The courts are issuing a suspended sentence of 1–2 years in the majority of domestic violence cases. Fifty-two percent (52%) of all decisions recorded by JSMP between July 2010 and June 2013 have been suspended sentences.
- The Oecusse District Court is issuing a greater number of fines in domestic violence cases than the other three district courts. Fifty-four percent (54%) of domestic violence cases monitored in the Oecusse District Court have resulted in a fine being issued to the perpetrator.
- The courts are not awarding civil compensation to victims of domestic violence. Between July 2010 and June 2013, JSMP has only recorded five domestic violence cases where the court has ordered that the perpetrator pay compensation to the victim.

²³ Case number 563/C.ord/2011/TDD.

4. Implementation of the Law Against Domestic Violence

4.1 Framework for analysis

This section analyses the implementation of the LADV in Timor-Leste using findings from JSMP's court monitoring statistics, case studies and interviews with justice sector actors. In particular, this section focuses on how domestic violence cases are being charged by the public prosecutor, and how the courts are determining the appropriate sentence in cases where the defendant is found guilty. This section also examines the issue of protection orders for victims, and the execution or enforcement of sentences.

It is important to stress that domestic violence is a form of gender-based violence directed against women, occurring within the family and interpersonal relationships. JSMP's court monitoring statistics prove that the overwhelming majority of the perpetrators of domestic violence in Timor-Leste are men, and the victims are women. It is also well recognised that such violence against women is a violation of their human rights. The State therefore has a responsibility to ensure that laws against domestic violence give adequate protection to all women, as well as take all legal and other measures to provide effective protection of women. These measures include penal sanctions, civil remedies and compensation to women.²⁵ This means that the State must not only pass legislation on domestic violence, the State must also ensure that the legislation is effectively implemented and monitored.

"MEN ARE THE ONES
WHO BEAT THEIR WIVES
ALL THE TIME, NOT WIVES
BEATING HUSBANDS."

– JUDGE ²⁴

4.2 Charging of domestic violence offences do not reflect the nature of domestic violence

JSMP court monitoring found that the majority of domestic violence cases are being charged by the public prosecutor as a simple assault under article 145 of the Penal Code. Of all domestic violence cases monitored by JSMP between July 2010 and June 2013, 71 percent (71%) were charged under article 145 of the Penal Code. During the same period, only 15 percent (15%) of cases monitored were charged as mistreatment of a spouse under article 154.

²⁴ Interview conducted on 19/06/2013.

²⁵ Committee on the Elimination of Discrimination against Women, General recommendation No. 19 (1992) on violence against women, para. 5.

In the majority of domestic violence cases involving physical violence against a spouse or de facto spouse, the prosecutor will have the option of charging the perpetrator for simple assault, serious assault or mistreatment of a spouse. The elements of these offences are described below in table 9.

Table 9. Comparison of the elements of articles 145, 146 and 154 of the Penal Code

Offence	Elements		Penalty
Simple offences against physical integrity – article 145	1. Intentionally causes physical harm to another person		Up to 3 years imprisonment or fine
Serious offences against physical integrity – article 146	1. Intentionally causes physical harm to another person	2. With the purpose of: <ul style="list-style-type: none"> • depriving that person of an important organ or limb; • seriously or permanently disfiguring that person; • seriously affecting that person's capacity to work, intellectual faculties or capacity to procreate, in a permanent or long-lasting way; • causing permanent illness or incurable mental disorder to that person; or • endangering the life of that person. 	2—8 years imprisonment
Mistreatment of a spouse – article 154	1. Intentionally inflicts physical or mental harm or cruel treatment on a spouse or de facto spouse		2—6 years imprisonment, if no heavier penalty is applicable under another provision

All three offences require that the perpetrator intended to cause harm to another person. Article 15 of the Penal Code provides that a person acts with intent not only if he intends to commit the crime (that is, intends to cause physical harm to another person), but also if the defined criminal act is a necessary or possible consequence of his action, and he accepts this possibility. For example, if a defendant hits his pregnant wife and causes a miscarriage, the defendant cannot claim that he did not intend to cause the miscarriage as this was a real possible consequence of his actions. If a defendant uses a metal pole to hit his wife and breaks her arm, he cannot claim that he never intended to break her arm as this was a real possible

consequence of his actions and he acted regardless of this possibility. If a defendant repeatedly stamps on his wife's head, he cannot claim that he never intended to cause serious brain injury as this is a very real risk of his actions.

While it is clear that article 146 only applies in cases where the perpetrator had intended to cause serious physical harm to the victim, articles 145 and 154 can cover acts causing a wider range of less serious injuries. Article 154 is also broader as it covers acts causing mental harm and cruel treatment. For example, it could cover the making of threats, humiliation, verbal abuse, controlling behaviour and other forms of emotional or economic abuse.

Article 154 does not expressly require that there be repetition of the relevant act. It only requires that the perpetrator has intentionally inflicted harm on his spouse or de facto spouse. However, there appears to be perception within the Public Prosecution Service that article 154 should only be used where there is evidence of repeated acts of violence. JSMP interviewed three public prosecutors who all expressed the view that 'mistreatment' means the perpetrator regularly inflicts violence, or mental harm, or cruel treatment against his spouse.²⁷ JSMP's court monitoring statistics also prove that prosecutors are far more likely to charge a defendant for simple assault under article 145, than for mistreatment of a spouse under article 154 which carries a higher maximum penalty of six years imprisonment.

"IF HE [THE DEFENDANT]
HITS HER [HIS WIFE] ONCE,
TWICE, THEN COMES
FORWARD, WE CAN'T SAY
THAT THIS IS
MISTREATMENT."

– PROSECUTOR ²⁶

"Article 154 on mistreatment of a spouse [...] this article applies to perpetrators who regularly commit this crime, example, when the perpetrator repeats criminal acts [against his wife]."

– Prosecutor²⁸

Case Study 1 below is typical of the cases monitored by JSMP in which the public prosecutor has charged the defendant with mistreatment of a spouse under article 154. In most of these cases, there is evidence of past abuse or there is a more serious element of physical violence, such as the use of a weapon to inflict the injury. In contrast, Case Study 2 shows that even where there is evidence of serious and repeated violence, the public prosecutor may decide to charge the defendant for simple assault under article 145 rather than for mistreatment of a spouse under article 154.

²⁶ Interview conducted on 19/06/2013.

²⁷ Interviews with district public prosecutors conducted on 28/05/2013 and 18/06/2013.

²⁸ Interview conducted on 28/05/2013.

Case Study 1: Assault with a tree branch – case of mistreatment of a spouse²⁹

The public prosecutor alleged that the defendant had an argument with the victim, his wife, because the victim borrowed \$60 from someone without informing the defendant. The defendant took a branch and hit the victim on her head, eye and hand. The defendant hit the victim a total of 20 times.

The victim suffered injuries to her head, a bruised hand, black eye and dizziness. The public prosecutor charged the defendant with mistreatment of a spouse under article 154 of the Penal Code.

During the trial, the defendant testified that the charges were true. The defendant also testified that he hit the victim regularly because she had caused herself to miscarry her pregnancy. The defendant stated that he regretted his actions and that he would not reoffend in the future. The victim testified that the defendant regularly committed violence against her, however the victim did not go to the police because she did not want the defendant to go to jail.

While the charging of any particular case of domestic violence will depend on the facts of the case, it is incorrect to interpret article 154 as only applicable to cases of repeated acts of violence or other acts of mistreatment. What is reasonable to assume is that in the majority of domestic violence cases within a marriage or de facto relationship, the violence is part of a pattern of abusive behaviour, as highlighted by Case Study 2 below.

The 2010 Demographic Health Survey for Timor-Leste found that 33.7 percent (33.7%) of women in married or de facto relationships had experienced physical violence 'often or sometimes' in the past 12 months.³⁰ Where cases of domestic violence are reported to the police, it is highly unlikely to be the first time that the woman has experienced such violence in that relationship. In this context, public prosecutors should carefully consider whether article 154 or article 145 is the appropriate and more specific charge in a case.

Article 42 of the Penal Code provides guidance on charging where one or more offence may apply to a relevant criminal act. The rules to be followed are:

- the more specific provision is to apply over the general provision;
- the main provision is to apply over the subsidiary provision; and
- the broadest and most complex provisions are to apply.

²⁹ Case no. 26/Crm.C/2012/TDB.

³⁰ National Statistics Directorate of Timor-Leste, 'Timor-Leste Demographic and Health Survey 2009-10' at 229: <<http://www.measuredhs.com/pubs/pdf/FR235/FR235.pdf>>.

Case Study 2: Repeated assault and harassment – case of simple assault³¹

On the evening of 24 March 2011, the victim returned to her home from university with a friend so they could study together. The defendant, her husband, asked the victim “why are you arriving home at night time?”. When the victim did not respond, the defendant punched the victim twice on the back of the head and her back, and grabbed the victim around the throat, twisting the victim so she would fall to the ground. After the assault, the victim went to a shelter and they reported the case to the police. The defendant came and threatened to hit the victim so the victim decided to stay at the shelter.

The victim stated that she had been living with the defendant since 2009, and she regularly suffered domestic violence committed by the defendant. Since the day of the incident, the victim had been staying at the shelter and the victim’s mother was not sleeping at their house because she was also afraid of the defendant. The victim stated that the defendant smashed some of the belongings in their home.

While the victim was staying at the shelter, the defendant came on numerous occasions when he was drunk and tried to force the shelter to handover the victim. As a result of the defendant’s behavior, the victim could not attend university for seven months.

The public prosecutor charged the defendant with committing a simple offence against physical integrity characterised as domestic violence in accordance with article 145 of the Penal Code and article 35 of the LADV. The defendant fully accepted all of the charges.

The court sentenced the defendant to one year’s imprisonment, however the sentence was suspended for one year and six months with the condition that the defendant must not contact or approach the victim or the victim’s mother three years.

In cases of domestic violence within a marriage or de facto relationship where either article 145 or article 154 could apply, this means article 154 should be preferred. Article 154 is the more specific charge in most cases as it relates specifically to violence or mistreatment within such relationships and has a higher penalty range. It is also the broadest provision, as it covers physical and mental harm, as well as cruel treatment generally. It also better reflects the seriousness of violence perpetrated within a marriage or de facto relationship, and prosecutors should select a charge which offers the greatest maximum penalty. The only exception should be where it is absolutely clear that the crime was an isolated and anomalous incident. In all cases, the public prosecutor should thoroughly investigate any history of violence in the relationship before a final decision on the appropriate charge is made.

³¹ Case no. 357/C.Ord/2011/TDD.

4.3 When is a case of domestic violence a case of serious assault?

Between July 2010 and June 2013, JSMP only monitored six cases of domestic violence which were charged as a serious assault under article 146. This represents only two percent (2%) of all 352 domestic violence cases monitored by JSMP.

While article 146 imposes a higher standard of culpability and harm caused, or intended, than simple assault under article 145, it must be questioned why so few domestic violence cases are being charged as a serious assault. It is essential that public prosecutors select a charge which reflects the seriousness of the offence in all cases. During the past three years, JSMP has observed several domestic violence cases which appear to fit the requirements of serious assault but were charged as either simple assault or mistreatment of a spouse. The four case studies below are examples of serious cases of domestic violence in which article 146 was the more appropriate charge.

Case Study 3: Serious assault by choking a pregnant victim – case of simple assault ³²

The public prosecutor alleged that on 4 February 2011, the defendant choked his spouse and bit her hand. Then on 6 February 2011, the defendant pulled the victim's hair and choked her. The public prosecutor alleged that the defendant hit the victim on a weekly basis.

At the time of the assault, the victim was seven months pregnant. The public prosecutor charged the defendant with committing a simple offence against physical integrity characterised as domestic violence in accordance with article 145 of the Penal Code and article 35 of the LADV.

The court found that the defendant assaulted his spouse on 4 February 2011, however the second incident that allegedly occurred on 6 February 2011 was not proven. The court admonished the defendant and ordered him to pay court costs of \$10.

³² Case no. 378/2011/C.Ord/TDD.

Case Study 4: Serious assault with a hammer – case of simple assault ³³

On 18 October 2011, the defendant argued with his wife about money. The defendant became angry and struck the victim, threw her to the ground and took a hammer and hit the victim on the back of her body. The victim suffered an injury to her knee and swelling to the back of her body.

The public prosecutor charged the defendant with committing a simple offence against physical integrity characterised as domestic violence in accordance with article 145 of the Penal Code and article 35 of the LADV.

Before the court, the defendant and the victim corroborated the facts that were contained in the indictment. The public prosecutor requested for the court to issue an admonishment against the defendant.

The court found the defendant guilty of the charges and sentenced him to admonishment.

There must be a revision of what constitutes serious assault to ensure that it is properly applied in cases of domestic violence. Article 146 requires proof that the defendant intentionally caused physical harm to the victim, with the purpose of:

- depriving that person of an important organ or limb;
- seriously or permanently disfiguring that person;
- seriously affecting that person's capacity to work, intellectual faculties or capacity to procreate;
- causing permanent illness or incurable mental disorder to that person; or
- endangering the life of that person.

While the public prosecutor must prove that some type of physical harm was caused, article 146 does not require that the actual harm inflicted was one of the type listed above, such as loss of limb or organ. It is only necessary to prove that the defendant intended to inflict a type of serious harm listed in article 146. With regards to intention, article 15 of the Penal Code provides that a person acts with intent not only if he intends to commit the crime, but also if the defined criminal act is a necessary or possible consequence of his action, and he accepts this possibility.

³³ Case no. 413/C.Ord/2012/TDD.

Case Study 5: Serious assault with an object – case of simple assault ³⁴

The indictment stated that the defendant struck his wife twice on her right ear and punched her once in the mouth, causing her to fall to the ground. When the victim fell to the ground, the defendant grabbed the victim by the head and smashed her head into the fireplace. The defendant kept hold of the victim's arm, dragged her outside and took the lid of a barrel and hit the victim on her body. The defendant also insulted the victim with foul language.

The victim suffered swelling to her right ear, swelling to her head and injuries to her left leg. The victim was treated at a health centre.

The Public Prosecution Service charged the defendant with committing a simple offence against physical integrity characterised as domestic violence in accordance with article 145 of the Penal Code and article 35 of the LADV.

During the trial, the defendant stated that he committed these acts because the victim did not cook food for their children and hit the children when they asked for food. The defendant stated that he regretted his actions and would not reoffend in the future. The victim stated that the defendant had regularly beaten her and she could not continue to accept it, and therefore she reported it to the police.

The public defender asked for the court to acquit the defendant from the charges because he regretted his actions, is responsible for three children and has pledged not to commit such acts in the future.

The court found the defendant guilty and handed down a fine of \$45 and ordered the defendant to pay court costs of \$10.

For example, in Case Study 3 where the defendant choked his spouse, it could be submitted that he intended to endanger her life as this was a necessary consequence of his actions. The fact that the victim was pregnant made her particularly vulnerable and increased the possibility of serious harm. In other cases where the perpetrator uses an object or weapon to inflict the harm, as in case studies 4, 5 and 6, the charge of serious assault under article 146 must be considered. In Case Study 5, the defendant smashed the victim's head into the fireplace and used an object to repeatedly hit her. It is clear that he intended to cause physical harm to the victim, and could have foreseen that his actions may result in serious disfigurement to the victim and endanger her life. His actions were also very likely to cause serious head injuries, placing the victim at risk of intellectual disability and mental illness.

³⁴ Case no. 22/Crm.S/2012/TDB.

Case Study 6: Serious assault with a machete – case of mistreatment of a spouse³⁵

On 29 January 2011 at approximately 8pm, the defendant and the victim (his wife) had an argument. The defendant took a machete and struck the victim four times on her head, four times on her back and once on her fingers.

The victim suffered injuries to her head and received three stitches. The victim also suffered a dislocated finger and a bruised back.

The public prosecutor charged the defendant with committing mistreatment of a spouse under article 154 of the Penal Code. At trial, the defendant confessed that the facts in the indictment were all true. The defendant regretted his actions and testified to the court that he would not commit any further violence against his spouse or any other person.

In his final recommendation, the public prosecutor requested for the court to sentence the defendant to three years imprisonment, to be suspended for three years. The public defender requested that the court to acquit his client because he had confessed, expressed regret and had reconciled with the victim.

The court found the defendant guilty of the charge and sentenced him to two years imprisonment, to be suspended for two years.

In Case Study 6, the defendant used a machete to inflict harm to his wife. This is clearly a case of serious assault. By using a weapon which has the potential to seriously wound or cause death to another person, the defendant clearly intended to inflict serious harm to the victim, or such injury was a very real possible consequence of his actions.³⁵

In determining the appropriate charge, the public prosecutor should also have access to complete medical evidence regarding the victim's actual injuries. An assessment of injuries should include physical, intellectual and psychological injuries suffered and the likelihood that those injuries would permanently affect or have a long-term impact on the victim's ability to work, procreate and enjoy a good quality of life. Timor-Leste already has a Medical Forensic Examination Protocol which allows documentation of injuries from domestic violence, sexual assault and child abuse. Public prosecutors should be given training on assessing evidence obtained through the Protocol when determining the appropriate charge.

In many countries, the prosecution service issues a legal guideline or prosecution policy which clearly explains the relevant criminal provisions, and relevant factors for assessing harm, culpability and seriousness. Legal guidelines, together with sentencing guidelines, can promote greater consistency in charging and sentencing of crimes.

³⁵ Case no. 08/Crm.C/2012/TDB.

Lastly, it should be noted that the actual harm caused should be relevant in sentencing. Where the defendant's actions meet the requirements of article 146, and the actual harm caused is within a lower range of seriousness, the court may consider a lower penalty. Issues related to sentencing in domestic violence cases are discussed further below in Part 4.5.

4.4 Protection orders are not being applied during investigation and trial phases

During three years of monitoring, JSMP has not recorded a single domestic violence case in which the court has ordered the removal of the defendant from the family home or prohibited the defendant from having any contact with the victim during the investigation and trial phases.

Article 37 of the LADV provides that in addition to restrictive measures provided for under the Criminal Procedure Code, such as pre-trial detention, the court may order that a defendant in a domestic violence case be coercively removed from the family residence and be prohibited from having any contact with the victim. The court can apply this order where it is reasonable to assume that the violence may occur again and place the life or the

physical, mental or sexual integrity of the victim at risk. As the LADV does not describe the procedure for applying such protection orders, article 184 of the Criminal Procedure Code should be followed. Under article 184, the public prosecutor may request that the court make a protection order during the investigation phase, or the court itself can make the order during the procedural phase after consultation with the public prosecutor. Where feasible, the court should hold a preliminary hearing with the defendant.

JSMP previously discussed the importance of protection orders in cases of incest in the report 'Incest in Timor-Leste: An unrecognised crime'.³⁶ In one particularly serious case, a father who sexually abused his daughter was not removed from the family home for three years while the case was first being investigated by the public prosecutor, and during trial. During these three years, the perpetrator sexually abused his other 14 year old daughter.³⁷ Had the court applied a protection order or other restrictive measure in this case to remove the defendant from the family home, the sexual abuse of the younger daughter could have been prevented.

In other cases of domestic violence within a marriage or de facto relationship, protection orders could minimise the trauma suffered by the victim and prevent further acts of violence while the case is being investigated. In many cases such as Case Study 2, the victim will be forced to live in a shelter for many months because she fears for her safety. Protection orders

PROTECTION ORDERS ARE
AMONG THE MOST
EFFECTIVE LEGAL
REMEDIES TO PROTECT
WOMEN FROM DOMESTIC
VIOLENCE.

³⁶ Above n5 at 20.

³⁷ Above n5 at 16-17.

removing the perpetrator from the family home during the investigation and trial phases mean that the victim could continue living safely in her own home, with her children and extended family.

Protection orders are among the most effective legal remedies to protect women from domestic violence. The United Nations Model framework for legislation on violence against women states that all legislation provide for protection orders to complainants and survivors of violence, together with the requirement that the defendant provide financial assistance to the complainant such as alimony and child support.³⁸ It is also essential that the breach of a protection order is made a specific offence to ensure that it is effective.³⁹ In all cases of domestic violence, the public prosecutor should first consider whether a protection order during the investigation and trial phases is necessary to prevent further violence against the victim, taking into account the victim's own wishes. The prosecutor should at the same time apply for the defendant to provide provisional alimony under article 32 of the LADV.

4.5 Why are courts suspending a prison sentence in the majority of domestic violence cases?

JSMP court monitoring statistics show that in the majority of domestic violence cases where the defendant is found guilty, the courts are suspending the execution of the prison sentence under article 68 of the Penal Code or substituting the prison sentence for a fine under article 67 of the Penal Code. Of the decisions monitored by JSMP in the three years since the promulgation of the LADV, 52 percent (52%) have been suspended sentences. Most of these suspended sentences were for a period of 1–2 years, and only nine percent (9%) of prison sentences were suspended for a period longer than three years. A further 24 percent (24%) of all known decisions resulted in the issuing of a fine to the perpetrator.⁴⁰

The courts must always give preference to a non-custodial sentence where the law provides for an alternative penalty, if that alternative can adequately fulfill the purpose of the penalty.⁴¹ Article 61 of the Penal Code states that the objective of applying penalties is to protect legal interests essential to life in society, and to facilitate the perpetrator's reintegration into society.

The Penal Code provides for a number of alternative penalties to a prison sentence. Where the court has handed down a prison sentence of less than three years, it may suspend the execution of the prison sentence for a period of between one and five years.⁴² Suspending the

³⁸ United Nations Department of Economic and Social Affairs, 'Handbook for Legislation on Violence against Women', UN Doc. ST/ESA/329 (2009) at 44-46: <<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>>

³⁹ Above n38 at 50.

⁴⁰ These statistics exclude 'unknown' decisions where JSMP was unable to directly monitor the sentencing and was not given access to court records on the decisions.

⁴¹ Article 68 of the Penal Code.

⁴² Article 51 of the Penal Code.

execution of a prison sentence can be conditional on the performance of certain duties, impose certain rules of conduct on the perpetrator, and be applied together with monitoring of the perpetrator during the period of the suspension.⁴³ The suspension must be revoked if at any time during the period of suspension, the perpetrator commits a crime of intent which is punishable with a prison sentence.⁴⁴ This means that the perpetrator must serve the original prison sentence which had been suspended, in addition to a penalty for the new crime committed.

Where the court hands down a prison sentence of less than one year, the court can substitute the prison sentence for a fine to be paid to the State⁴⁵ or order the perpetrator to undertake community service.⁴⁶ Article 38 of the LADV imposes additional requirements for the substitution of a prison sentence with a fine to the requirements in article 67 of the Penal Code, stating that in cases of domestic violence, the court can issue a fine only if the security of the victim has been guaranteed, the perpetrator agrees to counselling or followup by victim support services, and the substitution for a fine is advantageous for maintaining the family unit.

Where the perpetrator is found guilty of a crime which carries an abstract maximum penalty of three years or a fine, the court can decide to admonish the perpetrator as the sole penalty. A sentence of admonishment can only be applied if reparation has been made, the perpetrator is a first time offender, and admonishment is sufficient to prevent the crime and rehabilitate the perpetrator.⁴⁷

In addition to these sentencing options, under article 38.1 of the LADV, the court can impose an accessory penalty which prohibits the perpetrator from contact with the victim for a maximum period of three years, where it is considered that this is necessary to prevent repetition of the violence.

It is striking that during the three years of court monitoring, JSMP has only monitored one case (Case Study 2) in which the court has made an additional final order that the perpetrator not contact the victim for three years.⁴⁸ JSMP has not monitored any other domestic violence cases in which the court has suspended a prison sentence on the condition that the perpetrator perform certain duties, or comply with certain rules of conduct or be subject to monitoring. In 126 out of 352 domestic violence cases monitored by JSMP, the courts have applied a 'clean' suspension of the prison sentence, with no additional obligations or monitoring of the perpetrator.

⁴³ See article 69 (suspension of a prison sentence on condition that certain duties be performed); article 70 (rules of conduct); and article 71 (suspension of a prison sentence with monitoring) of the Penal Code.

⁴⁴ Article 73 of the Penal Code.

⁴⁵ Article 67 of the Penal Code.

⁴⁶ Article 79 of the Penal Code.

⁴⁷ Article 82 of the Penal Code.

⁴⁸ This order was presumably made under article 38.1 of the LADV, or article 70 of the Penal Code.

Based on JSMP court monitoring and interviews with judicial actors, the courts often consider the potential financial impact of a prison sentence on the perpetrator's family, and that the perpetrator and victim have reconciled, as important factors in determining whether a prison sentence should be suspended in cases of domestic violence. In many domestic violence cases monitored by JSMP, the public prosecutor has also recommended that the court suspend a prison sentence.

"PUTTING PEOPLE IN JAIL,
THIS IS NOT THE
SOLUTION. [WE] MUST
CONSIDER THAT THE
DEFENDANT'S WIFE IS
UNEMPLOYED."

– PROSECUTOR ⁴⁹

Under article 51 of the Penal Code, the court should determine the appropriate penalty for a crime according to the perpetrator's guilt and prevention requirements. The court should consider all general aggravating or mitigating circumstances when determining the perpetrator's level of guilt.⁵⁰ The fact that the perpetrator and the victim have reconciled is a relevant consideration and a factor mitigating his liability for the crime.⁵¹ Balanced against this, the fact that the victim is or was a spouse, or a de facto spouse, aggravates the culpability of the perpetrator and increases the need for punishment.⁵²

Economic dependency of the victim on the perpetrator can be a significant obstacle for women seeking to leave abusive relationships or ask for help from formal agencies and support services. However, economic dependency should not be assumed by the courts in all cases of domestic violence. Where there is proven economic dependency, the court should explore other remedies such as civil compensation and an order for the perpetrator to pay alimony to the victim.⁵³

"Men, as the head of the family [...] the court needs to also look at this. If this person is sent to prison, what about the economic condition of the family."

– Judge ⁵⁴

⁴⁹ Interview conducted on 28/05/2013.

⁵⁰ See article 52 of the Penal Code on general aggravating circumstances, and article 55 of the Penal Code for general mitigating circumstances.

⁵¹ Article 55.2(g) of the Penal Code.

⁵² Article 52.2(l) of the Penal Code.

⁵³ Article 29 of the LADV specifically provides that where the victim of domestic violence is a spouse, de facto spouse or ex spouse or de facto spouse, she will be entitled to alimony as long as she proves to be in need of that assistance. This is in addition to the right to provisional alimony under article 32, which may be awarded by the court.

⁵⁴ Interview conducted on 19/06/2013.

Under article 104 of the Penal Code, compensation for loss and damage resulting from a crime is obligatory and should be assessed by the court under rules provided for under the Civil Code. However, JSMP has only monitored five cases of domestic violence in the three years where the court has ordered that the perpetrator pay compensation to the victim.

It is interesting that in the Oecusse District Court, there is a trend towards substituting a prison sentence with a fine in cases of domestic violence. Between July 2010 and June 2013, out of 56 domestic violence cases monitored by JSMP, in 30 cases the court had issued a fine and in only seven cases had the prison sentence been suspended.

"At the Oecusse District Court at the start of 2012, the court applied suspended sentences in many cases of domestic violence, but the outcome wasn't good because the convicted persons thought that they were free or had not been convicted [...] the court observed that it is better to hand down a fine."

– Judge ⁵⁵

In cases of domestic violence, it is important to consider whether a fine would impose financial hardship on the victim and her children. Article 105 of the Penal Code provides that compensation to the victim be prioritised over any fines paid to the State. It is also recommended that they be combined with treatment and supervision of the perpetrator, as set out in article 38 of the LADV. The imposition of fines, which is paid to the State and not to the victim, has been noted to potentially impose economic burden on the victim and experience has suggested that fines are not a sufficient form of punishment to change the perpetrator's behaviour.⁵⁶ There is a clear need to monitor the effectiveness of fines, and all other forms of alternative punishment such as a suspended sentence, in influencing behaviour-change and preventing domestic violence. This will be discussed further in Part 4.6.

Where a prison sentence is suspended, it is important for the court to properly explain to the defendant that it is not an acquittal, and that if he commits any offence of intent during the period of suspension, the suspension will be revoked and he will have to serve the full prison sentence. According to Timor-Leste's only women and children's legal aid service, victims also don't clearly understand what is a suspended sentence.⁵⁷

"Based on the experience of ALFeLa [...] the majority of clients don't understand what a suspended sentence is. Because often we observe that the judge provides only a general explanation that the defendant has been given a suspended sentence."

– Legal Officer, Women and Children's Legal Aid (ALFeLa) ⁵⁸

⁵⁵ Interviewed on 21/06/2013.

⁵⁶ Above n38 at 52.

⁵⁷ Asisténsia Legál ba Feto no Labarik (ALFeLa) – Women and Children's Legal Aid.

⁵⁸ Interview conducted on 15/07/2013.

In many cases, the victims are also not satisfied with the court's decision to hand down a suspended sentence.

"In our experience, when we accompany victims to court to hear the court's decision, many victims are not satisfied with the court's decision to hand down a suspended sentence against the defendant [...] the victim feels that there is no justice because the defendant has committed violence, but no fine or compensation has been ordered for their injuries or damage to their property."

– Legal Officer, Women and Children's Legal Aid (ALFeLa) ⁵⁹

It is important to recognise that sending a perpetrator to prison may not be the appropriate or proportionate penalty in all cases of domestic violence. The legal system gives preference to non-custodial sentences, if it would adequately protect the victims and the community, and would facilitate the rehabilitation of the perpetrator. A suspension or fine may be appropriate where the violence is less serious and it is a first-time offence, and the perpetrator has confessed, apologised to the victim and has undertaken to change his behaviour in the future. Suspension should always be ordered with compensation to the victim, and where necessary, a civil order to pay alimony to the victim.

To increase the likelihood that the perpetrator will change his behaviour, the courts should also consider imposing additional conditions or rules of conduct. For example, the court may suspend a prison sentence on the condition that the perpetrator pays compensation to the victim and makes a public apology. Where gambling may have been an underlying cause for the violence, the court may order that the perpetrator not visit places of gambling or regularly appear before community leaders to confirm that he has changed his behaviour. Monitoring of the perpetrator by authorities, such as the police, during the period of suspension is another sentencing option.

At the same time, penalties must be proportionate to the crime. In cases of serious violence, the public prosecutor should choose an appropriate charge and seek a prison sentence. Where the perpetrator uses a weapon to inflict the violence, this should always be considered an aggravating factor. Consistency of sentencing with the gravity of the crime is an important element of providing effective protection to women from domestic violence. Lack of adequate punishment clearly reduces the deterrent effect of making domestic violence a public crime.

Where there is inconsistent sentencing, experience from other countries shows that sentencing guidelines can contribute to ensuring that sentences imposed in cases of violence against women are consistent and proportionate to the seriousness of the crime.⁶⁰ Sentencing guidelines are usually developed by the government or a committee of judicial officers with the aim of helping courts decide on the appropriate sentence for an offence. The guidelines describe the general sentencing principles, relevant factors indicating harm and culpability, and

⁵⁹ Interview conducted on 15/07/2013.

⁶⁰ Above n38 at 50-51.

aggravating and mitigating factors using practical examples. While maintaining discretion of judges to determine the appropriate penalty in each case, sentencing guidelines can help reduce inconsistency in sentencing.⁶¹ Sentencing guidelines can also assist public prosecutors in identifying the appropriate charge in a case. JSMP notes that developing such sentencing guidelines is also a commitment under Timor-Leste's National Action Plan on Gender-Based Violence.⁶²

4.6 Execution and monitoring of sentences

To date, JSMP has not monitored any domestic violence cases involving a perpetrator who has re-offended during the period of a suspension of his prison sentence. During interviews with public prosecutors, JSMP was advised that there was one case before the Public Prosecution Service where the perpetrator had previously been sentenced to two years imprisonment which was suspended for three years, and has reoffended during this period.⁶⁴ The low number of cases involving re-offenders is likely to be because the LADV has only

existed for three years. Over time, more perpetrators will appear before the courts as repeat offenders, if there is proper recording and monitoring of prior convictions. In such cases of repeated incidents of domestic violence, it is important that the courts apply increasingly severe penalties, as provided for under article 53 of the Penal Code on recurrence. Rules for sentencing repeat offenders should be clearly specified in any sentencing guidelines.

It is important to ensure that there is effective monitoring of compliance with suspended sentences and fines if they are to have any deterrent value and promote behavioural change. The Public Prosecution Service is already responsible for enforcing decisions of criminal convictions as soon as they become final.⁶⁵ However, it is difficult to ascertain whether

"SO FAR WE DON'T HAVE
A GOOD MECHANISM TO
MONITOR CONVICTED
PERSONS WHO HAVE
BEEN GIVEN SUSPENDED
SENTENCES."

– PROSECUTOR⁶³

⁶¹ See for example sentencing guidelines issued by the UK Sentencing Council: <<http://sentencingcouncil.judiciary.gov.uk/sentencing-guidelines.htm>>.

⁶² See Timor-Leste National Action Plan on Gender-Based Violence, Outcome 10.1.2 - (English version). Strategic Focus – Bringing to the Court, Outcome 10: Improved decisions applied by the courts in GBV and DV Cases, 10.1.2 Develop guidelines on sentencing and provisional maintenance that comply with the requirements of the Penal Code and LADV, at 45.

⁶³ Interview conducted on 18/06/2013.

⁶⁴ Interview conducted on 18/06/2013.

⁶⁵ Article 324 of the Criminal Procedure Code. See also article 48 of the Criminal Procedure Code on the responsibilities of the Public Prosecution Service.

sentences are immediately executed in all cases.⁶⁶ At minimum, the police should have current records of all persons convicted with a suspended sentence so that they can respond immediately to any complaint of breaches of the sentence, and inform the Public Prosecution Service. The police and the Public Prosecution Service should also have clear procedures in place to ensure that the perpetrator complies with any conditions or rules of conduct attached to his suspended sentence, such as making a public apology, making reparations to the victim or complying with any other rules of conduct.

"...after the judge has handed down the decision, it is the responsibility of someone else to monitor [the convicted person]. We must know that during the period of suspension, there is someone monitoring them."

– Judge ⁶⁷

While the Penal Code refers to a 'reintegration service' which is responsible for monitoring convicted persons during the term of the suspension of a prison sentence under article 71 of the Penal Code, there is currently no such entity. In the short-term, the police under the delegation of the Public Prosecution Service, should be charged with monitoring perpetrators subject to a court order. In the long-term, the government should establish a reintegration service to supervise perpetrators of domestic violence and other offenders. The design of the social reintegration service should reflect the reality of conditions in Timor-Leste, and be built on existing community structures, such as suco councils, community police and local leaders.

The social reintegration service should also be responsible for monitoring any community service orders, which to date have never been applied by the courts, and facilitate intervention programmes designed to change the perpetrator's behaviour. Intervention programmes may be offered by non-government organisations or by government agencies, religious organisations and local community leaders. Such programmes could include counseling, anger management courses, or drug and alcohol treatment.⁶⁸ If such intervention programmes become more readily available through both government and non-government organisations, the courts would be more willing to order that the perpetrator participate as a condition of the suspension of his prison sentence.

Sentences obliging the perpetrator to pay a fine to the State should also be executed properly and set a clear timeframe in which the fine must be paid. Where a prison sentence is handed down by the court, the public prosecutor must immediately execute the sentence once the period for appeal has expired. Effective execution and monitoring mechanisms will also likely encourage the courts to hand down sentences with additional conditions, such as an order

⁶⁶ In at least one incest case previously reported on by JSMP in 'Incest in Timor-Leste: An unrecognised crime' the perpetrator was left to live free in the community for many months despite having been convicted by the court of sexually abusing his younger daughter.

⁶⁷ Interview conducted on 19/06/2013.

⁶⁸ Currently, the only such intervention programme that exists in Timor-Leste is the Alcohol and Drug and Managing Emotions Community Education program, facilitated by the NGO PRADET and the PNTL community police.

under article 38 of the LADV prohibiting the perpetrator from contacting the victim, as such orders can realistically be executed and monitored.

4.7 Courts must order perpetrators of domestic violence to pay compensation to victims

Compensation for loss and damage resulting from a crime is obligatory and should be assessed by the court under rules provided for under the Civil Code.⁶⁹ In cases of domestic violence, compensation can be particularly powerful as it could address economic dependency of the victim on the perpetrator and provide immediate remedy for victims. However, compensation must not be a substitute for criminal penalties, such as a prison sentence.⁷⁰

"The public prosecutor normally doesn't mention reparation because there are no provisions to determine what is sufficient compensation for the damage based on any facts so that the court can decide."

– Judge ⁷¹

The Civil Code provides rules regarding civil liability and it is the responsibility of the public prosecutor to submit all relevant evidence to establish the total harm suffered by the victim.⁷² The harm may not only include physical injuries, but emotional distress and any loss of earnings as a result of the injuries suffered.⁷³ The UN Special Rapporteur on Violence Against Women has recommended that compensation to women survivors of violence should include financial compensation for any physical and psychological injuries suffered, for loss of employment and educational opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social costs incurred as a consequence of the violence.⁷⁴

COMPENSATION FOR
LOSS AND DAMAGE
RESULTING FROM A CRIME
IS OBLIGATORY.

⁶⁹ Article 104 of the Penal Code.

⁷⁰ Above n38 at 52.

⁷¹ Interview conducted on 21/06/2013.

⁷² See Book II (Law of obligations), Chapter II (Sources of obligations), Section V (Civil liability). Article 417.1 of the Civil Code provides that: "Any person who, with intent or merely through fault, unlawfully breaches the rights of another or any legal provision intended to protect the interests of others shall be obliged to compensate the injured party for the damage resulting from the breach."

⁷³ Article 430.1 of the Civil Code provides that "For the determination of compensation, regard must be had to non-material damage which, because of its seriousness, deserves the protection of the law."

⁷⁴ Yakin Ertuk, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences', UN Doc E/CN.4/2006/61(2006) at para. 84: <<http://www.refworld.org/pdfid/461e2c602.pdf>>

All prosecutors should be trained on using medical reports and statements from the victims to make submissions to the court on the adequate amount of civil compensation that should be awarded. Any sentencing guidelines on domestic violence cases should also provide guidance on calculating civil compensation for victims. In most cases, the amount of civil compensation payable will be low as the perpetrators will have low incomes. However, even a relatively small amount of compensation can provide financial autonomy to the victim and be of significant symbolic value. Similar to fines which are calculated on a per day basis, there is flexibility to award civil compensation at an amount calculated per day over a period of several months or during the period of the suspension of the prison sentence. It is important that such court orders are properly enforced by the Public Prosecution Service and the police. As noted above, article 105 of the Penal Code provides that compensation to the victim be prioritised over any fines paid to the State.

5. Conclusion and recommendations

Domestic violence is the most common form of violence against women in Timor-Leste, and likely to be the single largest category of crime committed. Based on JSMP court monitoring over three years since the promulgation of the LADV, it can be seen that the LADV has had a significant impact in directing cases of domestic violence to the formal justice system for final sentencing by the courts. This is a significant achievement towards ensuring that women have access to all legal and other measures of protection, as well as effective remedies for the violation of their rights.

JSMP HOPES THAT THESE
RECOMMENDATIONS
WILL BE THE START OF A
POSITIVE DIALOGUE
BETWEEN ALL JUSTICE
SECTOR ACTORS, THE
GOVERNMENT, CIVIL
SOCIETY, COMMUNITY,
AND SURVIVORS.

JSMP's court monitoring statistics, case studies and interviews with justice sector actors also reveal that the existing legal framework on domestic violence must be implemented more effectively. Provisions on prosecuting crimes of domestic violence, sentencing of perpetrators, and protecting and providing civil compensation to victims, must be well understood by everyone involved in the formal justice system. In particular, the charging of domestic violence cases must better reflect the nature and seriousness of the crime. The sentencing of perpetrators must also adequately punish the perpetrator, while promoting behavioural change and providing compensation to the victims.

While non-custodial sentences such as a suspension of a prison sentence may be appropriate in some cases, it is important for the court to consider how suspension can be combined with additional orders, such as civil compensation, an order to make a public apology, make reparations, attend intervention programmes or be subject to supervision by a competent authority. The courts currently have a wide range of alternative sentencing options in domestic violence cases, however there needs to be effective execution and monitoring arrangements in place so that they can be confident that their orders can be properly implemented in the community.

Based on the findings and analysis in this report, JSMP makes the following recommendations to improve the implementation of legal protections for women against domestic violence in Timor-Leste. JSMP recognises that these recommendation will require time, additional resources and support of the government and formal justice actors to implement. JSMP hopes that these recommendations will be the start of a positive dialogue between all justice sector actors, the government, civil society, community, and survivors so that the formal justice system effectively protects all women from domestic violence.

Recommendations

- 1** The Public Prosecution Service should develop legal guidelines on charging in domestic violence cases. The legal guidelines should clarify that repeated violence is not a pre-requisite for charging an offender with mistreatment of a spouse under article 154 of the Penal Code. The legal guidelines should also provide examples of cases where article 146 of the Penal Code on serious assault should be applied. The use of weapons should always be considered an aggravating factor which increases the perpetrator's culpability and is evidence of intent to cause serious injury to the victim.
- 2** The Public Prosecution Service should always conduct a risk-assessment in all domestic violence cases in order to determine whether a protection order under article 37 of the LADV is required to protect the victim during the investigation and trial process. The public prosecutor should at the same time apply for a court order requiring the defendant to provide provisional alimony under article 32 of the LADV, if the victim requires financial support.
- 3** Courts should develop sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic violence. The sentencing guidelines should clearly outline the general sentencing principles, aggravating and mitigating factors using examples, rules for sentencing repeat offenders, guidance on all alternative penalties available under the law and provisions for calculation of civil compensation in cases of domestic violence. The sentencing guidelines should also promote orders aimed at changing the perpetrator's behaviour, such as an order to make a public apology, make reparations, attend intervention programmes or be subject to supervision by a competent authority. The sentencing guidelines should also provide examples of where protection orders under article 38.2 of the LADV will be necessary to protect the victim after a sentence is handed down.
- 4** The courts should make an order on civil compensation for the victim in all domestic violence cases. Compensation should provide reparation to the victim for not only physical injuries, but emotional distress and any loss of earnings as a result of the injuries inflicted by the perpetrator. The courts must ensure civil compensation is prioritised over the issuing of a fine.

- 5 The government should allocate sufficient resources to the Public Prosecution Service and the Timor-Leste National Police (Polísia Nasionál Timor-Leste) (PNTL) to ensure that all court sentences in domestic violence cases are effectively executed and monitored. At a minimum, the police should have current records of all persons convicted with a suspended sentence. The Public Prosecution Service and the police should also have clear procedures in place to ensure that the perpetrator complies with any conditions or rules of conduct attached to his suspended sentence.
- 6 The government should give funding to agencies and NGOs to provide intervention programmes to perpetrators of domestic violence in order to influence behavioural change. Direct funding should be given to establish or widen existing counseling services, anger management courses, drug and alcohol treatment, and other tailored programmes for offenders.
- 7 The government should establish a social reintegration service to monitor convicted persons during the term of the suspension of a prison sentence and facilitate community service orders and participation in intervention programmes. The design of the service should build on existing community structures, such as suco councils (village councils), community police and local leaders.

