



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

2011

OVERVIEW OF THE JUSTICE SECTOR JSMP Annual Report



Justice Facility
A Bilateral Co-operation between the
Governments
of Timor-Leste and Australia
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EXECUTIVE SUMMARY

In 2011 the justice sector continued to show development in specific areas whilst experiencing challenges in others. JSMP observed that achievements were made as the result of the desire and spirit of cooperation between judicial bodies and all parties, including the Timor-Leste community who are starting to understand their rights and obligations in a country that upholds principles of democracy and the rule of law. These principles ensure that the rights of all citizens are upheld in accordance with article 6(b) of the Constitution which provides that the State must guarantee and promote the fundamental rights of citizens and respect the principles of the democratic State.

Having observed these achievements and developments, JSMP wholeheartedly conveys its respect to all parties who have demonstrated their commitment, spirit and desire to continue to strengthen the justice sector. Specifically, JSMP wishes to congratulate all justice sector actors including judicial authorities and other parties who endeavoured to work together to ensure that the fundamental rights of citizens are upheld through the justice sector.

JSMP notes that in certain areas the justice system continues to face challenges. These challenges include: limited infrastructure and human resources; a limited understanding of gender and international law in relation to serious crimes; problems with the Portuguese language and availability of interpreters; a backlog of cases and lengthy delays on court decisions; problems with the application of the Law on Witness Protection; as well as practical difficulties such as the non-attendance of judicial actors or parties due to problems with communication and summons not being delivered effectively.

The 2011 *Overview of the Justice Sector* is aimed at informing the public about the various developments and challenges that occurred in the justice sector in 2011. Based on these developments and challenges JSMP has made recommendations to inform improvements and further strengthen this sector in the future.

Based on the results of analysis in this report, JSMP hereby presents 16 recommendations for future consideration:

- 1. JSMP encourages the National Parliament and the Council of Ministers to increase and provide adequate opportunities for open public consultations before debating and approving laws in the National Parliament and forwarding them to the President for promulgation.**
- 2. JSMP encourages and urges the President to use his authority effectively, in accordance with the provisions of the Constitution, to consult the public or at least use his legal advisors to examine legislation received from National Parliament before promulgation.**
- 3. JSMP urges the court to ensure that all sentences are executed effectively to ensure justice for victims. JSMP specifically urges the courts and the Public Prosecution Service to take responsibility for the case of militia member Valentim Lávio who was allowed to flee from his obligation to serve the prison sentence handed down against him due to institutional negligence.**

4. JSMP requests the Court of Appeal to ensure uniform interpretation of article 300 of the Criminal Procedure Code to avoid conflicting interpretations by different judicial actors. JSMP urges that all prison sentences be executed before the Court of Appeal issues an alternative decision to avoid incidents like that which occurred in the case of Valentim Lávio.
5. JSMP encourages the courts to apply the Law on Witness Protection in every case before the court, especially in cases involving public authorities or cases that endanger the safety of witnesses because of their specific nature, including cases of gender-based violence.
6. JSMP encourages all district courts to increase the volume of trials conducted by the mobile court initiative.
7. JSMP continues to encourage the courts, the Public Prosecution Service and other judicial actors to maintain their spirit of cooperation to strengthen partnerships with civil society and to consider civil society groups as an important resource to improve and strengthen the justice sector in Timor-Leste.
8. JSMP encourages the Ministry of Justice to give serious attention to the issue of interpreters and interpretation in courts to improve the quality and quantity of court interpretation. In addition, JSMP encourages the Ministry of Justice to develop a Tetum Legal Dictionary to enable all trial processes to be conducted in Tetum, unless there is a specific need to conduct trials in Portuguese.
9. JSMP encourages the National Parliament, with the Ministry of Justice's responsible departments, to amend the application of the transitional provisions in article 68 of Law No. 11/2008 on the Private Legal Profession and Lawyers Training. This is so that private lawyers can continue practising until the total number of lawyers meets the needs of the public and the legal profession.
10. JSMP encourages the Ministry of Justice to give attention to the issues of residence for judicial authorities in the districts, transport for public defenders in the districts and health and hygiene in the district courts.
11. JSMP encourages the Court of Appeal to promote public access, in particular all court proceedings should be open if it is not necessary under the law to restrict public access or participation.
12. JSMP encourages the courts to manage the application of appropriate restrictive measures on defendants of domestic violence in order to protect victims' security during the court process, and to reduce other risks such as victims being exposed to pressure or threats which aim to interrupt the court process.
13. JSMP urges relevant institutions, such as the Ministry of Social Solidarity and Ministry of Education, to fulfil their obligation to implement the Law Against Domestic Violence.
14. JSMP urges the National Parliament to finalise the Law on Legal Aid so that the law can be implemented this term and provide access to the courts for everyone.

15. JSMP encourages the Ministry of Justice to give attention to the provision of special rooms for victims of sexual violence and incest because often victims and defendants have to sit together outside the court before proceedings commence, and as a result victims do not feel comfortable about testifying.
16. JSMP urges also the Commander of the National Police Service of Timor-Leste to ensure that when members of the Vulnerable Persons Unit are rotated, they provide proper hand-over to new members before leaving.

INTRODUCTION

Many important developments occurred in the justice sector in 2011. Several important cases were processed by the courts, including a case involving allegations of corruption, fraud and misuse of power by government authority. In addition, the courts processed a case involving a militia member, Valentim Lávio; however their efforts were wasted because the court's decision could not be executed. There were also trials involving the falsification of documents by a state authority and falsification of documents involving civilians. Other developments in the judicial sector included the promulgation of the Civil Code by the President. Although the Civil Code has already been promulgated, JSMP continues to be concerned because there was inadequate consultation. JSMP observed that the promulgation of the Civil Code failed to take into account a number of substantial issues relating to the reality and context of Timor-Leste.

The objectives of this year's *Overview of the Justice Sector* are as follows:

- to provide information to the public so they are updated on developments and challenges occurring in the justice system in 2011;
- to analyse the realities of the Timor-Leste justice system in order to provide opinions, suggestions and criticism on relevant issues; and
- to make recommendations on what needs to be addressed and prioritised in 2012 and what needs to be maintained in the future.

As in previous years, JSMP acknowledges that it is unable to take note of all important events occurring in the justice sector. However, the information provided in this report reflects several important events that were monitored by JSMP during 2011.

JSMP hopes that this report will highlight several issues from 2011 and invites the public to jointly address these issues to improve the justice sector in the future.

This report is structured as follows:

- Section 1 - Describes developments in the justice sector in 2011, including the trial of several important cases, laws promulgated and draft laws still being developed by the government and the National Parliament, and the process of the Universal Periodic Review for Timor-Leste.
- Section 2 - Discusses the developments achieved and challenges faced by the justice system with a focus on infrastructure and human resources. This section also discusses gender equality and the position of women in the justice sector in 2011.
- Section 3 - Provides information about the experience of women in the justice system and the work of the Victim Support Service in 2011.
- Section 4 - Contains conclusions and recommendations for improving the justice sector in the future.
- Section 5 - Annex which includes the structure of the justice system in Timor-Leste, statistics of cases before the courts and a list of interviews carried out by JSMP for this report.

1. IMPORTANT DEVELOPMENTS IN THE JUSTICE SECTOR IN 2011

In 2011, many developments occurred in the justice sector that are worthy of analysis. The following issues were identified:

- The processing of 3 important cases - the case involving the Besi Merah Putih (BMP) militia member Valentim Lávio, the case involving the Dili District Administrator and the decision of the Court of Appeal on article 125 of the Criminal Procedure Code.
- The Draft Law on Legal Aid which is still before the National Parliament.
- The Civil Code which was approved and promulgated by the President.
- The Periodic Universal Review.

A. Important cases

Case of Valentim Lávio (Case No: 13/C.ord/2011/TDD)

The case involving Valentim Lávio received much public attention in 2011. This case is well known because the convicted person committed crimes against humanity in Liquica before and after the referendum in 1999. Valentim Lávio was charged by the Serious Crimes Unit for his involvement in the crime of murder against the victim Patrício Sarmento Viegas in Liquica District after the announcement of the results of the referendum on 30 August 1999.

Valentim Lávio was a member of the BMP militia group that conducted attacks and threatened civilians in Liquica District because of differing political policies between the pro-independence group and those who wanted to accept the autonomy package from Indonesia.¹

Trial Process

26 May 2011	Trial against Lávio commences in the Dili District Court.
8 July 2011	The Dili District Court convicts Lávio of committing crimes against humanity and sentences him to 9 years imprisonment. The sentence is read by the presiding judge on this case.
28 August 2011	Lávio's lawyer receives the written decision from the Dili District Court.
26 September 2011	Lávio's lawyer lodges an appeal but the Court of Appeal rejects the request because the time limit (15 days from when the court's decision was issued) had expired and the lawyer did not include grounds for lodging the appeal.
30 September 2011	The Court of Appeal issues a written decision rejecting the request for an appeal from Lávio against the decision of the Dili District Court.

¹Refer to JSMP Justice Update, 'Court delivers written decision after lengthy delay: convicted person Valentim Lávio in case of crimes against humanity from 1999 has fled Timor-Leste' (November 2011), JSMP Website: www.jsmp.minihub.org

17 October 2011	The Dili District Court issues a warrant of arrest against Lávio.
20 October 2011	The warrant of arrest is sent to Liquica District but Lávio has already fled to Indonesia.

JSMP monitored this case from commencement of the trial until the final decision was issued and identified several flaws regarding the processing of this case. The following flaws were identified:

- The Dili District Court failed to apply appropriate restrictive measures. JSMP believes that article 194 of the Criminal Procedure Code regarding temporary detention would have been more appropriate to ensure that Lávio did not abscond from jurisdiction. Instead, the Dili District Court did not apply any restrictive measures during the entire trial process.
- The judges, prosecutors and public defenders had different interpretations on the time limit for lodging an appeal under article 300 of the Criminal Procedure Code.
- The court failed to promptly write and issue a written decision as this process took more than three months. This failure impacted on the appeal process and the effective execution of the prison sentence.
- The Public Prosecution Service, particularly the prosecutor handling this case, did not have an effective plan to control the time limit for lodging an appeal to ensure that the prison sentence could be executed effectively and avoid unnecessary delays.

To address these problems, JSMP believes that it is necessary to consider the following steps in the future:

- Continue to provide training to legal practitioners on human rights and international law on serious crimes.
- Ensure there is a uniform interpretation of the provisions regarding the time limit for lodging an appeal (article 300 of the Criminal Procedure Code).
- For complex cases such as crimes against humanity, the Public Prosecution Service and the Public Defender's Office must appoint a team of prosecutors and public defenders to ensure that indictments and defence submissions are executed effectively.
- Manage and prioritise cases involving crimes against humanity so that final decisions can be promptly given to the family of the victim and the defendant.
- Ensure that there is intensive and efficient coordination between the courts, the Public Prosecution Service and the National Police of Timor-Leste (PNTL).

Case of Ruben João Braz de Carvalho (Case No: 364/C.Ord/2009/TDD)

Ruben João Braz de Carvalho was the Dili District Administrator between January 2001 and 2011. He was charged on suspicion of being involved in the crime of fraud and misuse of public power as a government official in 2002. This case came to public attention when the Public Prosecution Service suspected him of leasing state equipment to the private company Marabia Pty Ltd for US\$15,800.00. He kept the money for personal use and did not hand it over to State Revenue.

The Public Prosecution Service charged the defendant with corruption under article 2 of the Indonesian Anti-Corruption Law because this case occurred at a time when this law was still applicable and before the Timor-Leste Penal Code came into force. The Public Prosecution Service used the Indonesian Anti-Corruption Law which carries a heavy punishment because the defendant's actions were classified as serious.

The Public Prosecutor's Indictment stated that:

- The defendant and the Director of Marabia Pty Ltd signed a contract for the lease of a machine belonging to the government for three years (from 20 September 2001 until September 20 2004).
- The defendant started receiving payments in accordance with the contract from October 2001 at US\$1500 per month.
- The defendant did not have the authority to enter into a contract to lease out government equipment to private business.
- The defendant kept the money resulting from the lease for his personal use. The money was not submitted as State Revenue.
- The defendant misused his authority as a government official in violation of the Public Service Statute.
- The defendant is responsible for the following crimes:
 - corruption under article 2 of the Indonesian Anti-Corruption Law No. 31/1999 – which carries a maximum sentence of 11 years imprisonment; and
 - fraud and misuse of power pursuant to articles 372 and 374 of the Indonesian Penal Code which carry a maximum sentence of 4-5 years imprisonment.

On 4 August 2011 the Dili District Court read out its verdict against the defendant Ruben João Braz. The Court found that there was sufficient evidence regarding the defendant's involvement in the crime of fraud and misuse of power pursuant to articles 372 and 374 of the Indonesian Penal Code. The Dili District Court sentenced the defendant Ruben João Braz to a maximum imprisonment of 3 years and 6 months, as well as ordered the defendant to pay a fine of US\$21,800.00.

On 13 September 2011 the defendant through his lawyer lodged an appeal to the Court of Appeal against the decision of the Dili District Court. According to article 300 of the Criminal Procedure Code appeals must be lodged within 15 days from the time a decision is handed down by the court of first instance. The request for an appeal must include grounds for lodging the appeal.² When the Court of Appeal receives the appeal, the court shall evaluate any issue that could impede the adjudication of the appeal.³ The Criminal Procedure Code does not state the time limit for the Court of Appeal to issue a decision regarding the request for an appeal.

The prison sentence handed down by the Dili District Court against Ruben João Braz cannot be executed until the Court of Appeal deals with the request for an appeal. If the request is rejected, the decision of the Dili District Court will have the full force of the law and the defendant will be obliged to serve the prison sentence and pay the compensation ordered by the court.

²Article 301.1 of the Criminal Procedure Code.

³Article 304.1 of the Criminal Procedure Code.

The Court of Appeal has not yet processed this request for appeal. As such, the sentence can not be executed. There is no clear justification for this delay. The public continues to wait for this case to be resolved, to see if the original conviction will be upheld or if the defendant will be acquitted of all charges. This case is an interesting test-case for the integrity of the courts in relation to cases involving corruption. Unnecessary delays can reduce public confidence in the integrity and proper functioning of the courts.

To limit the movements of the defendant, the Dili District Court is currently applying a restrictive measure (proof of identity and residence) until a final decision is issued by the Court of Appeal. In addition, the Ministry of State Affairs has stood down the defendant from his position of Dili District Administrator through an official letter pursuant to the Civil Service Statute.

Another interesting case relating to corruption that involved a state official was the case of Jose Luis Guterres who is the current Deputy Prime Minister in the AMP coalition government. This case ended with a full acquittal because the evidence presented by the Public Prosecution Service did not convince the court. Although there was insufficient evidence, this case reflects a positive application of the fundamental principle of equality before the law. This case also took a long time to process because of the issue of government immunity.

Developments regarding article 125 of the Criminal Procedure Code (Case No: 80/CO/2011/TR)

This case was significant to the implementation of the Law Against Domestic Violence. In this case the Court of Appeal considered whether article 125 of the Criminal Procedure Code could be applied to victims of domestic violence and sexual assault. JSMP had been advocating against the application of this article in cases of domestic violence.⁴ JSMP has recommended that judges be given the discretion to apply article 125 in cases of domestic violence.

As a general rule the court can oblige a witness to give testimony in a trial. However, article 125 states that an exception applies when the witness is the partner or a family member of the defendant.

The underlining policy of this article is the public interest of preserving the family relationship and avoiding conflict that may arise when the witness is forced to testify against his or her family member. The Court of Appeal considered whether article 125 should apply to victims of crimes committed by a partner or a family member, especially for sexual crimes and domestic violence. The Court of Appeal argued that in such cases, article 125 is not applicable for the following reasons:

- The legislative intent of article 125 is to protect the family relationship between the defendant and the witness. Where the crime has been committed against the victim by a family member, the ties of kinship between the victim and the defendant have already been disrupted by the commission of the crime.
- Sexual crimes and domestic violence are usually committed without the presence of other witnesses and by family members of the victim. Without the victim's testimony, such cases cannot be properly adjudicated and justice cannot be administered. The good administration of justice is in the public interest and has to be weighed up against the public interest of minimising disruption to marital and family relationships.

⁴ See JSMP report 'Provisions of Article 125 of the Criminal Procedure Code: Problematic Implications for victims of domestic violence' (2009): <www.jsmp.minihub.org>.

- The victim often does not freely choose not to testify in cases of sexual crimes and domestic violence. In practice, the victim is compelled or conditioned by the defendant to refuse to testify against her free will.
- Domestic violence is defined as a 'public crime' under article 36 of the Law Against Domestic Violence. Public crimes are treated differently to semi-public crimes, notably an individual complaint does not have to be filed to initiate prosecution for a public crime (article 106.2 of the Penal Code). Allowing victims to choose not to testify in cases of sexual crimes and domestic violence in effect reverses the legislative intention of making domestic violence a public crime by making prosecution dependent on the victim's decision to proceed with the hearing.

The Court decided that in light of these reasons, article 118.2 (general rule on statements by victims) of the Criminal Procedure Code could not be interpreted as applying article 125 to the testimony of a victim of sexual crime or domestic violence.

The Court of Appeal also confirmed that the courts must examine the testimony given by the victim and defendant to the Public Prosecution Service during the investigation phase as evidence pursuant to article 266.2(b) of the Criminal Procedure Code. This article is an exception to the general provisions of article 266 which states that the court must only base its decision on evidence presented and examined during the trial.

JSMP believes that the intention of the legislature to make domestic violence a public crime will be undermined if article 125 of the Criminal Procedure Code is applied to victims of domestic violence. Therefore, JSMP believes that this decision strikes the proper balance between the public interest of preserving marital and family relationships on the one hand, and the public interests of administering justice and prosecuting sexual crimes and domestic violence.

This decision is significant for handling cases of domestic violence as intended by the Law Against Domestic Violence. The court's decision shows sophisticated understanding of the vulnerability of victims of domestic violence when they are summoned to provide testimony against their own family members. JSMP hopes that this decision will allow for easier processing of domestic violence cases and make it possible to overcome a range of obstacles in bringing perpetrators of domestic violence to court.

JSMP notes that courts of first instance have to follow the decision of the Court of Appeal. If the courts of first instance do not comply with this decision, an appeal can be lodged.

B. Important laws

Draft Law on Legal Aid

The Ministry of Justice continued to develop the Draft Law on Legal Aid through the National Department for Legislative Matters and Laws and the National Department for Human Rights and Citizenship. This law is intended to facilitate and provide legal aid to each citizen who does not have the capacity to access justice. The aim of this draft law is to enable everyone to access the courts without being impeded by economic, social or cultural factors.

In 2010 the Ministry of Justice conducted a public consultation on the draft law so that everyone could present their opinions and ideas as the law is intended to benefit all citizens.

On 15 July 2011 the Ministry of Justice launched an amended draft law. This revision demonstrates that the Ministry of Justice is committed to following international standards relating to access to justice. The draft law

Article 26 of the Constitution (access to courts) states:

1. Access to courts is guaranteed to all for the defence of their legally protected rights and interests.
2. Justice shall not be denied for insufficient economic means.

includes measures to provide free legal representation for all cases, including the payment of court costs and transport support, accommodation and food for citizens who are attending a legal process in court. To receive legal aid, a person or group must be of limited economic means and must submit a request to the court or judge handling the process. This request can be submitted at any stage of proceedings. The request must prove that the citizen is truly of limited financial means.

The draft law faces a number of challenges that could impact its implementation:

- There are not enough private lawyers working in Timor-Leste. Currently Timor-Leste only has 54 private lawyers who must attend training at the Judicial Training Centre by the end of 2012. At the end of 2012, most of the lawyers will not have completed their study at the Judicial Training Centre and will not be allowed to practice as lawyers unless the government changes the Law on Private Lawyers to give them enough time to complete their training.
- Currently there are more human resources in Dili than in the districts. To ensure that everyone in the districts can access legal aid like those in Dili, the Ministry of Justice must develop a plan to strengthen the legal profession in the districts. These steps could include providing incentives for private lawyers to work in the districts.

JSMP believes that this draft law must be immediately enacted because the State has an obligation to help citizens who have limited financial means to pay for legal services. This law upholds the principle of the rule of law by guaranteeing equal access to justice. JSMP requests that the National Parliament consider this law in 2012 and table it for discussion and approval so that it can be forwarded to the President for promulgation.

Civil Code

Timor-Leste did not have its own Civil Code after gaining its independence in 1999. Between 1999 and 2011, the Indonesian Civil Code continued to apply. This policy was based on article 3.1 of UNTAET Regulation No 1/99 which stated that laws previously applicable in Timor-Leste, including the Civil Code, would continue to apply until Timor-Leste established its own legal system through the competent authorities.

10 years later Timor-Leste drafted a Civil Code which was promulgated by the President of the Republic on 23 August 2011. From the time that this law was drafted until promulgation, JSMP observed a range of concerns and dissatisfaction regarding its debate and approval in the National Parliament and promulgation by the President. These concerns were raised because many articles in law do not reflect the real conditions in Timor-Leste and also because the process did not give adequate time and provisions for debate.⁵

JSMP attempted to delay the promulgation of this law. JSMP's efforts included the submission of proposals to the National Parliament, the drafting of press releases, mobilising public opinion, organising focus group discussions with local authorities, requesting a meeting with the President of the National Parliament and President of the Republic. However in the end all of these efforts failed to convince the National Parliament and President of the Republic to not approve and promulgate this law.

⁵ Please refer to the JSMP Report entitled "Developments and Challenges for the National Parliament in 2011" (2011) detailed commentary about the legislative process regarding the Civil Code: <<http://www.jsmp.minihub.org/>>

C. Universal Periodic Review

In October 2011 Timor-Leste participated in the Universal Periodic Review (UPR) process in Geneva. The UPR is carried out by a Working Group of the United Nations Human Rights Council to review if member states are complying with their human rights obligations and their commitments. This review is based on a national report prepared by the government, information from human rights experts and other interested organisations. The human rights obligations relevant to the UPR are the Charter of the United Nations, human rights treaties ratified by the State, national policy on human rights and other policies, as well as international humanitarian law.

The review of Timor-Leste examined developments and challenges in protecting and improving human rights in Timor-Leste. The review examined important issues regarding access to the courts and justice for victims of past human rights violations. The government of Timor-Leste acknowledged in its national report that Timor-Leste continues to face challenges in developing its justice system, including a lack of infrastructure and legal professionals as well as an incomplete set of national laws.⁶ JSMP contributed to the 'shadow report' prepared by civil society for Timor-Leste's UPR by expressing concern about the administration of justice, including impunity for past crimes and the rule of law.⁷

Following the review process, which included discussions between government representatives of Timor-Leste and the Working Group, the Working group provided recommendations directed at improving the human rights situation in Timor-Leste. The Working Group made 125 recommendations of which the government accepted 46 and rejected one, as well as responded that it has already implemented or is in the process of implementing 42 other recommendations. The government must respond to a total of 36 remaining recommendations by 16 March 2012.⁸

The Working Group made a number of recommendations in relation to the justice system, including recommendations to comprehensively and effectively implement the Law Against Domestic Violence;⁹ to continue building judicial institutions, including by increasing the capacity of judicial actors and increasing funding for district courts;¹⁰ taking concrete steps to ensure that justice will be provided to victims of human rights violations during the war for independence, as well as for the families and victims, and implementing the recommendations contained in the CAVR and CTF reports.¹¹

JSMP hopes that this process will lead to concrete steps by the government to improve the justice system in Timor-Leste, especially in three areas – the implementation of the Law Against Domestic Violence, the development of judicial institutions and the provision of justice to victims of human rights violations that occurred during the Indonesian occupation. JSMP encourages the government, especially the Ministry of Justice, to work with institutions and civil society organisations to implement and monitor the implementation of these recommendations.

⁶ The Timor-Leste National Report that was included in paragraph 5(a) of the Human Rights Resolution Annex 5/1, A/HRC/WG.6/12/TLS/1, para. 44.

⁷ Summary that was provided by the High Commission for Human Rights in accordance with paragraph 15(c) of the Human Rights Resolution Annex 5/1, A/HRC/WG.6/12/TLS/3.

⁸ UNMIT and the High Commission for Human Rights regarding the UPR: <<http://www.laohamutuk.org/Justice/UPR/UNMIT-OHCHRfactsheetEn.pdf>>.

⁹ Draft report of the Working Group, A/HRC/WG.6/12/L.15, para 77, recommendation 22 - 25; also para.78, recommendations 8 - 16.

¹⁰ Refer to the reference above, para. 77, recommendations 30 - 34; also para.78, recommendation 24.

¹¹ Refer to the reference above, para. 79, recommendations 23 -25, 28 - 31.

2. PROGRESS AND CHALLENGES IN TIMOR-LESTE'S JUSTICE SYSTEM

In this section JSMP would like to present information about progresses and challenges in the justice system for 2011. The information contained in this section is based on JSMP monitoring and interviews conducted by JSMP with judicial actors in November 2011 and January 2012.

A. Developments in infrastructure and facilities

Institutions of the justice sector still face problems with infrastructure and equipment. JSMP believes that adequate infrastructure is critical to facilitating the proper functioning of this sector and to increase productivity. JSMP notes that in the *Timor-Leste Justice Sector Strategic Plan 2011-2030* the government committed to improving physical infrastructure, facilities and technical resources at the national and district levels.¹² JSMP encourages the government to implement this strategic plan in accordance with the timetable and to provide adequate funding to fully implement activities identified in the strategic plan.

In 2011, the state budget for the justice system increased however the funding for the district courts were reduced.

Comparison: Budget for 2010 and budget for 2011

	State budget approved in 2010	State budget approved in 2011
The Courts		
- Court of Appeal	\$0.86 million	\$1.95 million
- District Courts	\$1.68 million	\$0.58 million
Prosecutor-General	\$2.5 million	\$5.57 million
Prosecution Service (including the Public Defender's Office)	\$10.9 million	\$7.97 million
Totál	\$15.94 million	\$16.07 million

Justice sector infrastructure continues to improve

In relation to infrastructure JSMP notes that:

- Four district courts buildings (in Dili, Baucau, Suai and Oe-Cusse) as well as the Court of Appeal building are generally in good condition.
- The Public Prosecution Service and the Public Defender's Office facilities are in good condition.
- The Prosecutor-General and the Dili District Prosecutor still occupy the same building which may impact on their performance. Currently new offices for the Dili District Prosecution Service are being built in Matadouro, Dili. JSMP hopes that construction will be completed this year.

¹² Target 9, Timor-Leste Justice Sector Strategy 2011-2030, p.76.

- The Prosecutor-General has a plan to open a representative office in Ermera District because it has a very high number of criminal and civil cases.¹³ JSMP welcomes this plan and hopes it can be promptly implemented to reduce the backlog of cases.
- Sanitation is still a major problem in the Dili, Suai and Oe-Cusse District Courts. For example, there is no supply of clean water at the Suai District Court. This matter could not be addressed last year because the court did not have enough money. The Dili District Court has two public toilets, however only one is in good condition and able to be used. From April 2011 until the end of 2011 the Oe-Cusse District Court did not have running water. JSMP believes that as public institutions the courts need to be in better condition.¹⁴

Public Defenders do not have sufficient equipment

Based on JSMP monitoring, the courts and the Public prosecution Service currently have sufficient equipment.¹⁵ Transport for the courts and the Public Prosecution Service are sufficient as each judge and prosecutor has a car. However, the Public Defender's Office continues to face difficulties with equipment and facilities:¹⁶

- The Public Defender's Office in Baucau, Oe-cusse and Suai don't have internet facilities or a generator. JSMP noted this problem in last year's report, however the issue has not yet been resolved.¹⁷
- The Public Defender's Office continues to face problems relating to unequal distribution of transport as only a few people have been given cars. Others use motorcycles to perform their work which is problematic when there is heavy rain or when public defenders have to visit clients who reside in distant locations.

Accommodation for judicial actors remains inadequate

In the *Overview of the Justice Sector 2010* JSMP noted several problems concerning accommodation for judicial actors working in the districts.¹⁸ In districts outside Dili the government has a policy of providing state housing and facilities. JSMP supports this policy, however JSMP has observed that there are still problems with its implementation, namely:

- Public defenders in Oe-cusse don't use the accommodation provided by the State because there is only one house between two public defenders.
- There are four judges in Baucau District, however there are only two houses provided by the State. Currently two judges live in one house and the Chief Judge uses the other house, while the international judge rents a house.

¹³ JSMP interview with Jose Ximenes, Chief of the Dili District Prosecution Service, 25 November 2011.

¹⁴ JSMP interview with Joao Ribeiro, Chief Judge at the Oe-Cusse District Court, 1 December 2011.

¹⁵ Equipment includes chairs, tables, computers, internet, paper, photocopy machine, printer, ink, generator, petrol or diesel (for generator and vehicles) and phone cards. Equipment also includes transport for court actors.

¹⁶ JSMP interview with Cândia Xavier from the Public Defender's Office, Dili, 22 November 2011.

¹⁷ Refer to JSMP Report entitled 'Timor-Leste Justice Sector Review 2010', p.26.

¹⁸ Refer to JSMP Report entitled 'Timor-Leste Justice Sector Review 2010', p.26.

- The accommodation conditions for judges in Oe-Cusse are not very good, particularly the ceilings in the house which are damaged.

JSMP hopes that the State will resolve the issues with accommodation for judicial actors and improve equipment and infrastructure to create safe and conducive conditions in which judicial actors can work professionally.

B. Human resources in the judicial system

In 2011 JSMP observed an increase in the number of judges, prosecutors and public defenders. Despite this, human resources remains a problem in the justice system. JSMP is particularly concerned about the limited number of interpreters in each of the courts because this impacts on access to justice and the truth.

Number of judicial actors in 2011

Judicial actors	Tribunál					Total
	Appeal	Dili	Baucau	Suai	Oe-Cusse	
Judges	6	10	4	3	1	24
Prosecutors	-	13	3	3	2	21
Defenders	-	10	3	2	2	17
Court clerks	5	14	8	4	2	33
Administrative officers	22	8	8	4	2	22
Translators	1	2	3	1	0	7

Based on JSMP monitoring, court administration is improving. For example in 2010 it was very difficult to obtain data on cases from the Court of Appeal, however in 2011 the Court of Appeal started to be more open in providing information to the public. JSMP feels that court officials have started to demonstrate a better understanding of what information the public needs to access and what information should not be made available. JSMP hopes that in the future, the public can continue to access information about the judicial sector.

Problems with forming panels

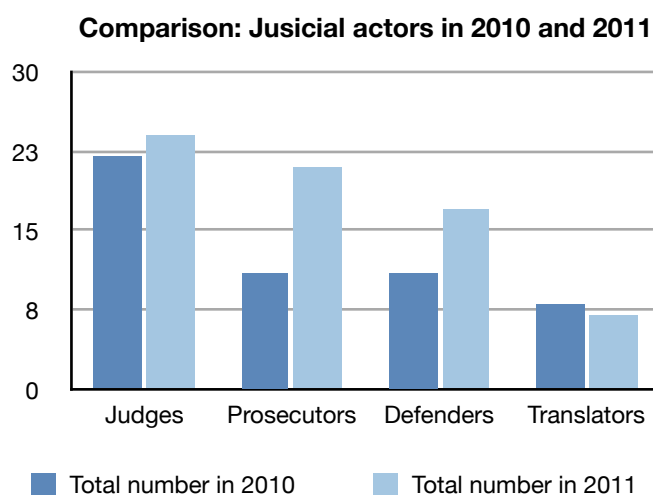
The total number of judges continued to slowly increase in 2011.¹⁹ Although their numbers increased, all of the courts encountered problems with the limited number of judges because the cases registered were far greater than the number of judges available. For example, the Dili District Court has jurisdiction over Dili District with a large population and high crime rate as well as Ermera District with the second highest crime

¹⁹ In response to the limited number of judges at the courts, on 16 May 2011 the Ministry of Justice through the Court of Appeal appointed 6 judges and prosecutors, comprising four judges (1 female), 2 prosecutors and 5 public defenders. Refer to JSMP Press Release entitled 'JSMP welcomes the appointment of the third group of judges, prosecutors and public defenders', 17 May 2011.

rate, and Liquica and Aileu.²⁰ In 2011 ten judges from Dili District had to process approximately 1,401 cases (criminal and civil).

The number of judges in Timor-Leste is still limited in comparison with the needs of its one million residents. This shortcoming impacts on the trial process because sometimes it is very difficult to establish a panel of judges to hear a case which results in trials being delayed or adjourned.²¹ Notwithstanding the small number of cases received, the Court of Appeal takes more than 2 to 3 months to hand down a final decision on cases lodged for appeal.

The policy of rotating judges through all of the courts is a positive step to increasing their experience, however it has implications for the judicial process because new judges have to start from scratch when they take on a case entrusted to them and have to adapt to new circumstances in their new courts. In another example, in November 2011 two judges from the Dili District Court were appointed to work at the Court of Appeal. This impacted on cases they were handling in the Dili District Court because those cases had to be adjourned while awaiting replacement judges.



Other judicial actors

The total number of public prosecutors increased in 2011. JSMP notes that the Oe-Cusse District Court and the Suai District Court have two public defenders each. This situation is better than in 2010 when the two courts only had one public defender each. This was a major problem because suspects could not obtain adequate legal assistance as guaranteed in article 34 of the Constitution.²²

Support from court clerks and administrative officers in each institution is vital for the proper administration of justice as it impacts on speed and efficiency of trials. In 2010 JSMP recommended that the government

²⁰ JSMP interview with Duarte Tilman, Chief Judge at the Dili District Court, 23 November 2011.

²¹ Article 15 of the Criminal Procedure Code states that cases that carry a sentence of more than 5 years imprisonment must be heard by a panel of judges (the decision is issued by three judges).

²² Article 34(2) states that an accused person has the right to select, and be assisted by, a lawyer at all stages of the proceedings, and Article 34(3) states that every individual is guaranteed the inviolable right of hearing and defense in criminal proceedings.

attends to the number of court clerks and administrative officers. JSMP is pleased to see an increase in the number of court clerks and other officials in 2011, especially in Suai and Oe-Cusse District Courts.

Nevertheless, Dili District Court still has a shortage of court clerks; one court clerk is responsible for processing cases assigned to four or five judges. The number of court clerks and officials working in the Baucau District Court is similarly insufficient to service such a large jurisdiction and its large population. Court clerks assigned to the Baucau District Court suggest that it is necessary to recruit more court clerks and additional officials to increase both quality and quantity of support. They also suggest providing training and capacity building to increase the quality of the court clerks and officials currently working in the courts.

Gender equality in the legal profession

Data compiled by JSMP shows that there is still a very small number of female judicial actors. To date, each year the Judicial Training Centre produces only one female court actor and thus their numbers are limited. Therefore, gender equality has not been achieved in the judicial system of Timor-Leste.

Based on JSMP monitoring, this situation has arisen because although many women study law, after they finish their studies most don't compete to become judges, prosecutors and public defenders, but instead select other professions. This lack of gender equality is problematic as it results in a justice system that has problems applying laws in a gender responsive way.

To respond to this challenge the Women's Justice Unit (WJU) of JSMP in 2011 organised a seminar program for senior high school students to encourage students to compete at the Judicial Training Centre and become judicial actors. JSMP hopes that activities like this will encourage women to continue their work in the field of justice.

Female judicial actors in 2011

Court	Judges		Prosecutors		Public Defenders	
	Female	Male	Female	Male	Female	Male
Court of Appeal	1	5	-	-	-	-
Dili	4	6	3	10	3	7
Baucau	1	3	1	2	0	3
Suai	2	1	1	2	0	2
Oe-Cusse	0	1	0	2	0	2
Total:	8	16	5	16	3	14

C. Portuguese language continues to impeded access to justice

The Portuguese language continues to be a problem in the Timor-Leste justice system. All laws are written in Portuguese and almost all official court documents use Portuguese, however people who use the formal justice system such as litigators, suspects, victims and witnesses, often don't understand Portuguese. A high number of court clerks and court officials also don't have a good understanding of technical terms in Portuguese. The courts are still confusing for graduates from the Judicial Training Centre, even though the graduates have attended various Portuguese language training programs.

Interpreters

The availability of interpreters during trial is vital to resolving language problems. Despite this fact, in 2011 there were a very small number of interpreters working in the courts.²³ JSMP is very concerned that Oe-Cusse District Court does not have an interpreter. When the Oe-Cusse District Court needs an interpreter, it is necessary to summon an interpreter from Dili to help provide interpretation or use court officials to interpret from Tetum into the local language of Baiqueno.

Further, the Public Prosecution Service and the Public Defender's Office don't have an interpreter who can help them to properly understand all of the legal documents and laws written in Portuguese. During this transitional period, it is very important for legal practitioners to improve their knowledge of Portuguese and have support from interpreters.

In addition to shortcomings in terms of quantity, there are also shortcomings in terms of quality. Often the interpreters can not interpret certain words used by the judge, prosecutor, public defender, suspect or victim, and in particular the testimony of witnesses. As a result, interpreters are unable to provide clear and complete interpretation. Based on JSMP interviews, it is apparent that interpreters still face problems in facilitating interpretation because they don't have a background in law. Therefore it is difficult for them to understand the legal terms used by court actors. Poor interpretation can have a serious impact on the results of a case, including the court's understanding of the truth from the testimony of victims and defendants.

D. Gender equality in the justice system

In 2011, JSMP through the Victim Support Service (VSS) and the Women's Justice Unit (WJU) continued monitoring the position of women in the justice system. In this section, JSMP will provide information and analysis on:

- Gender based violence in Timor-Leste;
- Implementation of the Law Against Domestic Violence;
- Application of suspended sentences;
- Restrictive measures in cases of domestic violence;
- National Action Plan on Gender Based Violence; and
- Law on Witness Protection.

Gender based violence in Timor-Leste

Gender based violence is still a serious problem in Timor-Leste.²⁴ Gender based violence is violence that is the result of gender inequality. Norms regarding gender and social structures as well as the position of

²³ In 2011 the Court of Appeal only had one interpreter who understands Tetum, Portuguese and English. The Dili District Court has 2 interpreters who understand Tetum and Portuguese. The Baucau District Court has 2 interpreters who understand Tetum, Portuguese, Indonesian, Note, Makdiki, Waimua and Maksae, however there are no interpreters for Fataluku, Maklero, Sáani and Galole. The Suai District Court has an interpreter who understands Tetum, Portuguese, Indonesian and Bunak, however there is no interpreter for Kemak.

²⁴ Statistics from 2004 show that cases involving gender based violence constituted more than one fifth of all cases submitted to the police and less than one third of all cases processed by the courts in 2004 - UNFPA case study 'Gender Based Violence in Timor-Leste' (2005): <http://www.unfpa.org/women/docs/gbv_timorleste.pdf>

vulnerable women in the community have an impact on gender based violence. Gender based violence can apply to men and women, girls and boys.

Types of gender based violence normally includes sexual violence against women, physical, sexual or psychological violence in the family, which is called domestic violence. Gender based violence also includes crimes in relation to sexual exploitation and human trafficking; forced marriages and dowry crimes; genital mutilation/harassment against women; sexual torture; bullying in schools and the work place; as well as cultural practices that treat women inappropriately.

Gender based violence has serious consequences for women's physical, reproductive and psychological health as well as their social situation/social welfare. It is also recognised that gender based violence is an obstacle to the country's social and economic development.

Cases monitored by WJU in 2011

Case type	Status Kazu					Total
	Ongoing	Closed	Resolved*	Acquitted	Sentenced	
Domestic violence	18	1	2	3	10	34
Sexual abuse of a minor	3	-	-	-	-	3
Sexual violence	10	-	-	5	5	20
Sexual violence against a minor	1	-	-	-	1	2
Attempted rape	1	-	-	-	-	1
Attempted rape of a minor	-	-	-	-	1	1
Aggravated murder of a spouse	2	-	-	-	1	3
Abandonment	1	-	-	-	-	1
Maltreatment of a spouse	1	-	-	1	-	2
Simple physical assault	-	1	-	-	-	1
Total number of cases monitored by the WJU in 2011						68

* 'Resolved' is where the defendant and victim enter an agreement or discontinue proceedings, which must be authorised by a judge. This practice occurred before the Law Against Domestic Violence came into force, which now categorises domestic violence as a public crime, meaning that such cases cannot be resolved via an agreement between the victim and the defendant.

Implementation of the Law Against Domestic Violence

In 2010 Timor-Leste, through the National Parliament, approved Law No. 07/2010 Against Domestic Violence to complement the Penal Code. The aim of the Law Against Domestic Violence is to protect, prevent and assist victims of domestic violence.

Domestic violence is now a public crime under article 36 of the Law Against Domestic Violence. However in reality, the people of Timor-Leste still consider these crimes as ordinary problems or a family issues that others don't need to know about. Many institutions have the responsibility to implement the Law Against Domestic Violence to change these attitudes. This section describes the responsibilities of each institution and progress achieved to date. Based on JSMP monitoring, this law is not yet been properly implemented in Timor-Leste. All institutions have to improve their activities and prioritise the issue of domestic violence.

Government	Ministry of Social Solidarity (MSS)
	Pursuant to article 15 (on a network to support victims) MSS has responsibility to establish, manage and supervise the national network of support centers for victims of domestic violence. Based on JSMP monitoring, MSS has not yet provided adequate conditions to respond to all of these situations.
	Ministry of Education (ME)
	Pursuant to article 11 (on education) ME has responsibility to fight domestic violence through education. This ministry has responsibility to draft all school curricula plans to include topics such as gender. MEA has not yet exercised its responsibilities in this regard.
	Secretary of State for the Promotion of Equality (SEPI)
Government	Is responsible for promoting gender equality and women's rights in Timor-Leste. SEPI has worked hard to conduct campaigns to fight violence against women, to strengthen networks between all of the ministries and to carry out a range of activities to provide and share information with the community on this law.
	Police
	The police have an important duty to prevent domestic violence, protect victims and initiate investigations so that legal proceedings can be pursued. Pursuant to article 24 (police assistance), the specialised assistance services of the police shall intervene in all criminal cases relating to domestic violence. All PNTL District Units have the responsibility to provide special services and assistance to victims and to prepare reports and gather evidence to be submitted to the Public Prosecution Service within five days.
	Based on JSMP monitoring, the police face a lot of problems such as a lack of transport and police stations are situated a long way from community members who live in isolated areas. This situation can cause obstacles that are very hard to overcome.

Judicial authorities	Public Prosecution Service
	Has responsibility to process cases of domestic violence pursuant to the Law Against Domestic Violence and the Penal Code. Based on JSMP monitoring, the Public Prosecution Service has conducted its duties in accordance with the Law Against Domestic Violence. In addition they also have displayed gender sensitivity in applying the law in accordance with the spirit of the law itself.
	Public Defenders Office
	<p>This law also regulates the duties of public defenders. Article 25 states that victims have the right to receive legal assistance. Public defenders have the responsibility to provide legal assistance if the victim cannot pay to receive legal advice.</p> <p>Unfortunately, there are only a limited amount of public defenders available to provide legal assistance to all victims in all jurisdictions. In addition, conflicts of interest can occur because a public defender has to provide assistance to a victim, but at the same time the public defender may be representing the defendant who has committed the crime of domestic violence against the victim.</p>
Other actors	Courts
	The courts have the duty to hear cases of domestic violence in accordance with the applicable law. Based on JSMP monitoring, there are several cases where the judge has handed down a clearly articulated decision based on the law and his/her conviction. However in several cases monitored by JSMP, the victim and the family of the victim felt dissatisfied because the judge handed down a suspended sentence rather than a prison sentence against the convicted person.
	Health Professionals
	Pursuant to article 22 (on assistance in hospitals) when health workers provide assistance to victims of domestic violence, they are obliged to provide information about the rights of the victim and inform the police or the Public Prosecution Service about the facts and provisional conclusions about what happened to the victim.
	Civil Society
	Civil society continues to carry out advocacy efforts through training programs for community leaders, youth leaders (both male and female), the police, senior high school students and university students. These organisations have also sought to interact with judicial actors such as judges, prosecutors and public defenders, on the technical interpretation of the Law Against Domestic Violence. Civil society has also endeavoured to inform others with the aim that the entire community fully understand the Law Against Domestic Violence.

Suspended sentences in cases of domestic violence

JSMP observed that much progress has been achieved since the Law Against Domestic Violence came into force. All of the courts have processed a significant number of domestic violence cases and prison sentences have been handed down.

JSMP also observed that domestic violence cases involving physical violence under article 145 (ordinary maltreatment) and article 154 (serious maltreatment of a spouse) of the Penal Code have until now not attracted a prison sentence, rather the courts have applied suspended sentences. The courts can suspend the sentence pursuant to article 68 of the Penal Code if the prison sentence handed down does not exceed 3 years imprisonment. These suspended sentences are not the same as being acquitted.

Suspended sentences mean that the convicted person does not serve a prison sentence, rather he/she will serve the sentence in the community. The court can also apply specific conditions against the convicted person, including obliging the convicted person to remedy the consequences of the crime. These obligations can include: providing reparations; apologising to the victim in public; giving money to the government or to a charity.²⁵ In addition, the courts can control the conduct of the convicted person, including obliging the convicted person to report to the court or preventing the convicted person from living with specific people.²⁶ For example, the court can prevent the convicted person from contacting the victim. During the period of the suspension, the convicted person must not be involved in any criminal act. If the convicted person is involved in a criminal act, the convicted person must first serve the original prison sentence handed down against him/her, before the new matter is processed.

Example: Cases of domestic violence which attracted suspended sentences in 2011²⁷

No.	Case type	Prison sentence	Suspended sentence
229/C.Ord/2011/TDD.	Domestic Violence: Pursuant to Article 145 (Ordinary maltreatment)	5 months	Suspended for 1 year
62/C.Ord/2011/TDD.	Domestic Violence: Pursuant to Article 145 (Ordinary maltreatment)	2 months	Suspended for 1 year
155/C.Ord/2011/TDD.	Domestic violence: pursuant to Article 145 (Ordinary maltreatment) and Article 154 (maltreatment of a spouse)	6 months	Suspended for 1 year
140/C.Ord/2010/TDD.	Domestic Violence: Pursuant to Article 141.1 (murder of a fetus)	3 years	Suspended for 4 years
679/C.Ord/2009/TDD.	Domestic Violence: Pursuant to Article 145 (Ordinary maltreatment)	6 months	Suspended for 1 year 6 months
307/C.Ord/2010/TDD.	Domestic Violence: Pursuant to Article 154 (Maltreatment of a spouse)	3 years	Suspended for 3 years
151/TDB/ 2011	Domestic Violence: Pursuant to Article 145 (Ordinary maltreatment)	1 year 6 months	Suspended for 1 year

²⁵ Article 69 of the Penal Code.

²⁶ Article 70 of the Penal Code.

²⁷ Based on JSMP monitoring of all cases in 2011 where suspended sentences were handed down.

In principle JSMP supports the application of suspended sentences when the court provides clear grounds and when it is in the public interest, such as diverting the person from the detention system where the crime is not considered to be serious. JSMP also supports suspended sentences that control the behaviour of the convicted person and the application of other conditions.

JSMP is concerned because JSMP believes that most members of the community, especially defendants and victims, don't understand well the nature of a suspended sentence handed down by the courts. Most people believe that suspended sentences are a form of acquittal. Therefore, JSMP recommends that when the judge reads out a decision, it is necessary to properly explain in detail to the convicted person that a suspended sentence is not the same as being acquitted, and that the convicted person must obey the obligations that the court imposes when the decision is announced.

Case studies - examples of two cases where suspended sentences were handed down

Case 1 (307/C.ord/2010/TDD)

In this case the public prosecutor charged the defendant with domestic violence pursuant to article 154 of the Law Against Domestic Violence (maltreatment of a spouse) article 2.1 of the Penal Code (definition of domestic violence).

The defendant hit and punched the victim in the eye, grabbed the victim and caused her to fall to the ground and burned the work uniform of the victim and the clothes of their children. In addition, whilst living together as spouses, the defendant regularly verbally attacked the victim and swore at her.

The Dili District Court handed down a prison sentence of 2 years imprisonment; however it was suspended for 3 years.

Case 2 (151/TDB/2011)

In this case, the defendant committed the crime of domestic violence against his wife. The defendant abused and hit the victim three times on her back and slapped the victim once with a shoe. The public prosecutor charged the defendant with article 145 of the Penal Code for simple assault.

The Baucau District Court handed down a prison sentence of 1 years 6 months imprisonment; however it was suspended for 1 year. JSMP believes that this decision is anomalous because normally the court hands down a suspended sentence which is longer than the original sentence to be served. JSMP also observed that the court did not explain in its decision the grounds why the suspension was shorter than the original sentence.

Restrictive measures in cases of domestic violence

The Timor-Leste Criminal Procedure Code entered into force on 1 December 2005 and regulates the criminal process from the beginning to the end. To date the competent authorities have been adhering to the criminal process framework, however JSMP believes that there are some areas that are not functioning properly, especially regarding the application of restrictive measures in cases of domestic violence and gender based violence.

Chapter II, Section I of the Criminal Procedure Code contains articles on restrictive measures. Restrictive measures are only applied against the defendant to ensure that a case is processed from the beginning until the end without any issues that can impede the processing of the case against the defendant.

Types of restrictive measures

- Proof of identity and residence (article 186) – this obliges the defendant to provide the authorities with full identification details (including name, residence, occupation). The defendant is also obliged to appear before the competent authority when notified and to provide information when changing residence or being absent from his/her residence for more than 15 days.²⁸
- Bail (article 187) – this measure can be applied if the defendant is charged with an offence that is punishable by a prison sentence. The court can order him/her to pay bail or provide money to be held as a guarantee.
- The obligation to appear regularly before the competent authorities (article 191) – this restrictive measure can be applied when the crime is punishable with imprisonment exceeding 1 year. The court will order the defendant to appear before the police or the court on specific days and specific times.
- Prohibition on travel (article 192) – this can be applied when the criminal act was committed intentionally and is punishable with imprisonment exceeding 3 years. The court can prohibit the defendant from travelling overseas or travelling without authorisation from the competent authorities and can seize the passport of the defendant.
- Prohibition against leaving residence (article 193) – this measure can be applied when there are strong indications that a criminal offence has been deliberately committed and is punishable by imprisonment of 3 years or more. The court can prohibit the defendant from leaving his or her residence. When the defendant wants to leave his/her residence, authorisation must be provided by the court.
- Preventative detention (article 194) - this is an extraordinary measure because it involves depriving a person of their liberty. The court can apply it when other restrictive measures are inappropriate and the criminal offence is alleged to have been committed intentionally and carries a prison sentence exceeding 3 years. This restrictive measure is only applied temporarily and can be altered, replaced, suspended or completely removed. To apply this restrictive measure, the defendant must fulfil several conditions, for example there is a risk that the defendant might abscond or there is a risk that the defendant will undermine the investigation or commit another criminal act.²⁹
- In addition to all of the above restrictive measures, article 37 of the Law Against Domestic Violence provides that the court can also coercively remove from the defendant from the family residence whenever there are signs which reasonably suggest that acts of aggression may occur again. The court can also prohibit the defendant from contacting the victim. This provision is very important to protect victims of domestic violence when the formal justice process is ongoing, so that they are not victimised again by the defendant and so that they are not threatened or coerced by the defendant.

²⁸ The court applied this measure in the case involving Ruben João Braz de Carvalho (Case No. 364/C.Ord/2009/TDD).

²⁹ Article 183 of the Criminal Procedure Code.

Article 182 of the Criminal Procedure Code states that the court must give preference to the measure that is suited to the procedural needs to be safeguarded; is proportionate to the gravity of the crime; and appropriate to the needs of the case. It should not interfere excessively with the normal exercise of the fundamental rights of the citizen. Restrictive measures are critical to protecting victims of domestic violence and gender based violence, and to encourage victims to use the formal justice system and prevent the loss of evidence in a case. Restrictive measures are the only way to protect extremely vulnerable victims and to ensure their rights to justice.

Based on the experience of VSS, currently there are a range of problems with the application of these restrictive measures in cases of gender based violence and domestic violence. It is clear that restrictive measures can be applied when the conditions in article 183 have been fulfilled. It is also clear that the principle of the presumption of innocence must be respected and the defendant is able to exercise his or her rights. However, based on the experience of the VSS, judicial actors often do not pay enough attention to the interests of the victim and the procedural requirements. There have been several cases meeting the requirements of article 183 where the courts applied restrictive measures of the provision of identity and residence details but not other more coercive restrictive measures which could better protect victims.

In other cases, prosecutors and judges only considered the restrictive measures of the provision of identity and residence details and temporary detention. They didn't consider in-depth other relevant restrictive measures such as bail, the obligation to appear before authorities, the obligation not to leave residence. In many cases the defendant continued to have contact with victims and can threaten and coerce the victim to withdraw their complaint. There have also been cases where the victim had continued to co-habitate with the defendant because they had nowhere else to live.

VSS also believes that often the courts do not apply the appropriate restrictive measure because they don't have all of the relevant evidence from the prosecution and the police. From VSS experience in speaking with the Public Prosecution Service regarding cases of domestic violence and gender based violence, it is apparent that most prosecutors handling a case often delegate to the police to conduct further investigations. VSS is deeply concerned with this situation because it can impact on the gathering of evidence, including all of the related circumstances that impact on the application of appropriate restrictive measures.

In the opinion of the VSS, restrictive measures are not being properly applied and thus victims are being victimised again. If the restrictive measures required in a case are not applied, especially the restrictive measure of temporary detention, the defendant who committed the crime against the victim remains free and the victim may have to remain in temporary shelter for up to 1 or 2 years. This situation can severely restrict the victim's freedom - in reality it is not the defendant who is subject to restrictive measures, rather it is the opposite whereby restrictions are applied against the victim. Sometimes victims must stay far from their families, not because they want to, but because the situation forces them to be removed from their children.

In other cases where VSS provided assistance, the courts did not apply appropriate restrictive measures and as a consequence the defendant repeated the crime whilst the matter was being processed. This increased the trauma suffered by victims. For example, in one case the defendant was accused with raping his own child. The Public Prosecution Service and the court handling this case did not apply restrictive measures against the defendant and the defendant continued to live together with the victim. This traumatised the victim because every day she had to meet with the person who raped her. In situations like this, it is extremely difficult for the victim to testify before the court as she is faced with the defendant every day.

National Action Plan on gender based violence

Pursuant to Article 13.1 of the Law Against Domestic Violence the government has responsibility to advance the National Action Plan on domestic violence together with civil society as well as families and local authorities. The ministries, the government and all state institutions have the core responsibility of showing leadership and providing resources to implement the National Action Plan and the Law Against Domestic Violence.

In 2011 SEPI established a Technical Drafting Committee to develop the National Action Plan on gender based violence with representatives from the government and civil society.³⁰ The aim of this Technical Drafting Committee is to take responsibility for providing guidance and advice on the contents of the draft National Action Plan on gender based violence. This committee has met to discuss the contents and structure of the draft plan, including providing input on the scope of the plan, definitions, policies, budget, monitoring and strategy for consolation and awareness-raising.

This committee is a consultative body that provides technical experts and advice to SEPI, however until now the relevant ministries have not fully participated in the meetings of the committee. This shows that ministries with the responsibility of implementing the Law Against Domestic Violence do not yet have the commitment to implement it. SEPI has attempted to get all relevant ministries to participate and conduct discussions on relevant issues and concerns, and areas where implementation needs to be strengthened.

JSMP respects the efforts of SEPI to facilitate the work of the committee and to encourage consideration of definitions and principles of guidance for the National Action Plan.

Law on Witness Protection

In the formal justice system, evidence relating to cases is critical to ensuring that decisions are issued in accordance with the law.³¹ One type of important evidence is witness testimony because witnesses are people who have direct knowledge of the events in question.³²

Often witnesses are pressured by others who want to influence them to not provide testimony in accordance with the law. Because they are coerced by other parties, witnesses may refuse to give testimony in court, even though they have been summoned by the court. In addition to being coerced, witnesses may also be subject to violence from parties involved in the case.

In light of these reasons the National Parliament approved a Law On Witness Protection (Law No. 02/2009) to protect and guarantee the integrity of witnesses so that they are not obstructed from freely giving their testimony in court. This law also protects the family of witnesses from threats by disguising the identity of the witnesses.³³ In addition, the Law Against Domestic Violence also contains several articles on witness protection. When necessary, the court can apply restrictive measures to provide protection to witnesses in

³⁰ Comprising the following representatives: SEPI, Ombudsman for Human Rights and Justice, Ministry of Justice, Ministry of Education, Ministry of Health, Secretary of State for Security, Ministry of Social Solidarity, Office of the Prosecutor-General, the National Police of Timor-Leste (Vulnerable Person's Unit), JSMP, Fokupers, Pradet, Casa Vida, Association of Men Against Violence, HAK Associate.

³¹ Refer to Article 116 of the Criminal Procedure Code on admissible evidence.

³² Refer to Article 119 of the Criminal Procedure Code on the objectives and restrictions regarding testimony.

³³ Refer to the Law on Witness Protection, Article 1.2 which states that the aforementioned acts can also be applied to a wife or a husband, mother, father or child, grandchild or sibling of the witness or other person who has a close relationship with them. Also refer to Article 4 on disguising witnesses.

relation to cases of domestic violence and for victims and others who have knowledge of the incident or other relevant information.

The government has full responsibility for this process as the Law on Witness Protection authorises a committee to run a special program to deal with witness protection issues.³⁴ This committee should respond to the interests of witnesses so that they are not concerned about providing their testimony freely and safely.

Since this law was promulgated on 6 May 2009, JSMP has observed that it has not been properly applied to allow witnesses to provide their testimony before the court. In a number of cases where VSS provided assistance, the authorities did not apply all measures necessary to protect witnesses in accordance with the Law on Witness Protection or the Law Against Domestic Violence. In reality, witnesses who want to provide testimony feel unsafe because of threats or statements made by those who want to obstruct the court process.

JSMP hopes that in the future, the Law on Witness Protection can function effectively to protect witnesses and encourage witnesses to provide testimony before the courts.

³⁴ Pursuant to Article 22 of the Law on Witness Protection.

3. VICTIM SUPPORT SERVICE

A. Women's experience with the justice system

In this section, the Victim Support Service (VSS) will analyse three cases involving victims of gender based violence who received legal assistance from VSS. This analysis will focus on the challenges faced by victims of gender based violence, in relation to the application of restrictive measures by judicial authorities and other agents, including the police have not been applying them optimally. These three cases have already been tried in the district courts. Although VSS provides legal assistance in cases of domestic violence and sexual violence, in this report VSS has only chosen three cases involving sexual violence because the challenges encountered in these cases are not the same as those in other cases of violence.

These case studies do not use the real names or addresses of the victims. VSS has changed some of the information in these case studies to protect the identity of the victims and their families.

Case study 1 - Maria's story

Facts of the case

'Maria' was the victim in this case. Maria was 13 years old and lived with her parents. In September 2010, at approximately 12 midday, Maria went to get some firewood. She didn't know that António (62 years old) has followed her until she reached a remote spot in the middle of the forest where there was nobody else around. Suddenly Antonio grabbed Maria from behind and covered her mouth with his left hand and said: "Don't yell, if you yell I will kill you". Then Antonio carried Maria on his back and took her into a large cave and once again said: "Don't yell, if you yell I will kill you".

Maria was very afraid, but she did not have the strength to fight Antonio. After entering the cave Antonio lay Maria on the ground then took off her pants and underpants. When Maria screamed Antonio shut her mouth tightly and continued pulling Maria's pants down to her knees.

Then Antonio pulled her underpants down to her knees and lay on top of Maria, pushing her two hands roughly on the ground. He then put his penis inside her vagina and performed sex until he ejaculated. Maria screamed loudly and tried to free herself from Antonio, however she couldn't because she was on the ground. At that time, a witness saw what happened and screamed and only then Antonio released Maria. The witness kept screaming out to other people to come and help and finally Maria's uncle and grandmother came to help Maria put her clothes back on and carried Maria home.

Maria's parents reported the case to the Vulnerable Person's Unit (VPU) of the PNTL. VPU took Maria to have a medical examination at the hospital. VPU then contacted VSS to provide assistance to Maria so she could have the case resolved through the formal justice system.

Investigation

A lawyer from the VSS provided assistance to Maria while her case was being processed through the formal justice system. The lawyer from VSS provided legal advice and explained the role of law enforcement officers and other parties, as well as explaining to the victim and her parents about her rights as provided for in the Constitution, the Criminal Procedure Code, the Law on Witness Protection, the Convention on the Elimination of All Forms of Violence Against Women and the Convention on the Rights of the Child.

VSS lawyers encouraged Maria to not feel afraid to provide honest testimony to the prosecutor who is responsible for handling criminal cases and also when providing testimony in a trial before the court. VSS provided this assistance for approximately one year.

In January 2011, Maria gave a statement during the investigation phase before the public prosecutor. However, the lawyer from VSS could not accompany her in the investigation room because the prosecutor handling this case wanted the investigation to be closed. When VSS confirmed with Maria about her statement given to the public prosecutor, Maria explained that she honestly explained all of the facts about what the defendant did to her.

The public prosecutor charged the defendant under article 177 of the Penal Code regarding sexual abuse of a minor which states that any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.

Trial and decision

In October 2011 VSS helped Maria to obtain a baptism certificate. The court needed the victim's baptism certificate before issuing a decision confirming her age. This effort was undertaken by the VSS with the aim of accelerating the processing of Maria's case.

In the court room, the court once again did not allow a lawyer from the VSS to accompany the victim because the hearing was closed to the public. This was despite VSS explaining to the court that VSS had been representing the victim from the beginning of the case. VSS only received information from the public prosecutor that the court needed another witness before it could decide this case.

The trial continued on the following day. VSS was again prevented from accompany the victim in the court room. When the trial was over, the grandmother of the victim told VSS that the court did not need her testimony because another witness had provided testimony to the court.

In October 2011 the court handed down a sentence of 3 years imprisonment that was suspended for three years and ordered the defendant to pay court costs of twenty dollars (US\$20).

Analysis

VSS respects the court's decision against the convicted person. VSS acknowledges that the law enforcement officers and other relevant parties work well with the court to accelerate the legal process in this case. VPU worked hard to take the victim for a medical examination and to ensure that restrictive measures of the provision of identity and residence details were applied to the defendant. In addition, JSMP is appreciates that the public prosecutor took this case to court.

Although VSS notes that this process is ongoing, VSS has the following concerns regarding this case:

- Based on the results of the medical examination and the statements of witnesses and the victim in court, the court confirmed that the sexual abuse did in fact occur. However the court did not order the defendant to pay compensation to the victim provided by article 104 of the Penal Code.
- VSS believes that the public prosecutor did not inform the victim about the court's decision and the right to lodge an appeal within 15 days. This shows that there was a serious failure on behalf of the public prosecutor and this has made the victim lose her faith in the formal justice system.

Case study 2 - Bikasa's story

Facts of the case

'Bikasa' was the victim in this case. Bikasa was aged 53 years and lived on the other side of a river. In February 2011, at approximately 9pm Bikasa was on the way home from a relative's house. On the way home, Maunuku (43 years old), who is Bikasa's neighbour, followed her without Bikasa's knowledge. Suddenly Maunuku used force to throw Bikasa to the ground, covered her mouth violently and kissed and lay on top of Bikasa. Bikasa tried to scream out for help but she could not because Maunuku was on top of her and was holding her on the ground with force.

After Maunuku pulled her pants down to her knees, removed her sarong and her underpants, he forcefully opened her thighs and put his penis into her vagina and had violently raped her. Bikasa tried hard to bite the hand of Maunuku that was covering her mouth. Then Maunuku let Bikasa go. When Maunuku stood up, Bikasa screamed for help. When Maunuku saw Bikasa screaming he grabbed her pants and hit her on her right ear then ran away and left her. A person who was close by saw everything that occurred.

On that evening Bikasa told her husband Maulu and the two of them spoke with the customary elders in their village the day after the incident. The customary elders called Maunuku and Bikasa and asked them to say what happened. After the customary elders heard statements from Bikasa and Maunuku they decided to impose a sanction in accordance with local custom in the form of one pig as compensation, one piece of customary cloth (a tais worn by a male) and US\$50 to be paid to Bikasa.

However, Maunuku and his wife did not agree with this decision. Maunuku and his wife wanted Bikasa to also provide compensation to Maunuku. Bikasa wanted to take the case to the police. One day later the customary elders called Bikasa to sign an amicable agreement, but they did not explain the contents of the agreement to Bikasa. Bikasa took the case to VPU and also submitted the agreement. Bikasa explained to VPU that she did not understand what was contained in the agreement. VPU examined Bikasa's statement and immediately took her for a medical examination at the hospital. VPU then contacted VSS to request that Bikasa be given legal assistance during the trial.

Investigation

The lawyer from VSS met with Bikasa directly to confirm the facts of the incident and to explain the contents of the agreement. Bikasa told the VSS that she put her thumbprint on the agreement because she was afraid of the customary elders who were her in-laws and her godfather and were also related to the defendant who was their son-in-law. VSS believes that her family and the culture did not support Bikasa to process her case through the formal justice system.

The lawyer from VSS provided assistance to Bikasa from the outset - from the investigation by VPU and public prosecutor and during the court trial. VSS noted that Bikasa is an extremely vulnerable victim, in terms of her economic circumstances, safety, culture and access to information. VSS helped Bikasa with transport, food and gave her legal advice before the Public Prosecution Service carried out its investigations. In addition to assisting Bikasa for 8 months to pursue her case through the formal process, VSS also visited Bikasa 4 times to find out how she was and continued to encourage Bikasa to reveal the facts of the case before it went to trial. Bikasa experienced trauma when she saw that Maunuku was walking around freely without fulfilling his obligations as decided by the customary elders.

Trial and decision

The Public Prosecutor charged Maunuku with rape under article 127 of the Penal Code. This crime is punishable by an imprisonment between 5 and 15 years.

The court started the trial in November 2011; however the defendant was not present in court without any justification. In the afternoon the court heard testimony from Bikasa as the victim, however the court found it difficult to hear the testimony of key witnesses because the witnesses only spoke a local language and the court interpreters were unable to provide interpretation. After a week the court obtained the services of a new interpreter who could interpret using the local language so that the witnesses could testify.

In December 2011 the court read out its decision based on the statement of the victim and the witnesses as well as the results of the medical examination which demonstrated that rape had occurred. Based on the evidence revealed during the trial, the court sentenced the defendant to 6 years imprisonment.

The court verbally summoned the public defender, prosecutor and court clerk to convey the decision to the parties as well as to notify them of their right to lodge an appeal within 15 days if they object to the decision. While the time limit to lodge an appeal has expired and the decision has the full force of the law, the court has not yet executed the decision against the convicted person to serve the 6 years of imprisonment.

Analysis

VSS notes that the victim chose to resolve this case through the formal justice system rather than through the traditional system. The victim and VSS feel that the court's decision is adequate and proportional to the crime committed by the perpetrator against the victim. However, the victim feels dissatisfied because even though the court has issued a decision, the convicted person Maunuku is walking around freely in front of the victim. This made the victim lose her determination to pursue the case through the formal justice system.

VSS is concerned that when the court read out its , the defendant was not present even though he had been summoned by the court. In this case the court orally informed the court clerk, public prosecutor and public defender to inform the victim and defendant about the decision. Even so, the defendant does not yet know about the court's decision. This shows that there is no effective line of coordination between the parties in the formal justice system to provide information and execute decisions of the court. VSS continues to urge the public prosecutor to execute the court decision in accordance with the Criminal Procedure Code. VSS hopes that the public prosecutor will continue to defend the vulnerable who place their faith in the formal justice system.

Case study 3 - Laurinda's story

Facts of the case

'Laurinda' was the victim in this case. Laurinda was aged 14 and lived with her parents. Maukatar was the defendant in this case. Maukatar is Laurinda's uncle. They live next to each other in the same village.

One afternoon in October 2009 Maukatar came to Laurinda's house and stayed there until the evening. Maukatar slept at Laurinda's house together with Laurinda's older brother and older sister, her two younger siblings and Laurinda herself. The six of them were all sleeping on the same bed made out of bamboo. In the middle of the night Maukatar removed Laurinda's skirt and underpants and put his penis into her vagina. Laurinda's siblings who were sleeping alongside her did not know about this because Maukatar covered her mouth tightly so she could not scream. In the morning Maukatar told Laurinda not to tell her parents about

the incident. The defendant committed the sexual assault against the victim three times. The last time occurred in January 2010. Laurinda was scared because she had been threatened by Maukatar not to tell anyone about his actions but she told her parents to report it to the police. When Maukatar heard that Laurinda's parents had reported the case to the police he fled into the jungle.

Investigation

VPU contacted VSS to provide legal assistance to Laurinda who had been sexually assaulted by her uncle. VSS compiled all of the facts from Laurinda and relevant witnesses in this case. VSS provided assistance in this case for approximately 6 months.

In this case the public prosecutor had good coordination with the police and VSS who provided legal assistance and encouraged the victim not to feel afraid when facing the investigation before the public prosecutor. VSS also provided other social assistance such as transport and food to the victim while the matter was being dealt with.

The lawyer VSS observed that the VPU worked hard and caught the defendant who had fled to the jungle pursuant to an arrest warrant issued by the district court. At that time the police immediately compiled relevant evidence in this case including the identity of the defendant. The police immediately handed over the defendant to the public prosecutor who was handling this case, who then immediately delivered the case file and the matter progressed to a preliminary hearing. During the hearing the court concluded that the actions of the defendant fulfilled the conditions for the application of restrictive measures in the form of temporary detention. The defendant was held in temporary detention for six months while awaiting trial.

Trial and decision

The lawyer from VSS accompanied Laurinda in the trial which commenced in February 2011 in the district court before a panel of judges. Although Laurinda was still a minor, she bravely testified before the court about what had occurred. VSS believes that the judges were gender sensitive and were careful in questioning Laurinda so that the questions they asked did not make her feel afraid or embarrassed to provide a response.

VSS noted that during the hearing the court very quickly examined all of the relevant evidence that had been diligently compiled by the public prosecutor to process this case. Within one month the panel of judges read out its decision and sentenced the defendant to six years imprisonment and ordered him to pay compensation to Laurinda of two thousand five hundred dollars (US\$2,500.00)

Analysis

As usual the trial was closed to the public as is the practice for cases involving gender based violence including sexual assault against a minor or rape under article 76.5 of the Penal Code. However the court authorised the lawyer from VSS to accompany the victim during the trial because she was a minor and article 25 of the Law Against Domestic Violence provides that the victim has the right to legal assistance from a public defender or private lawyer.

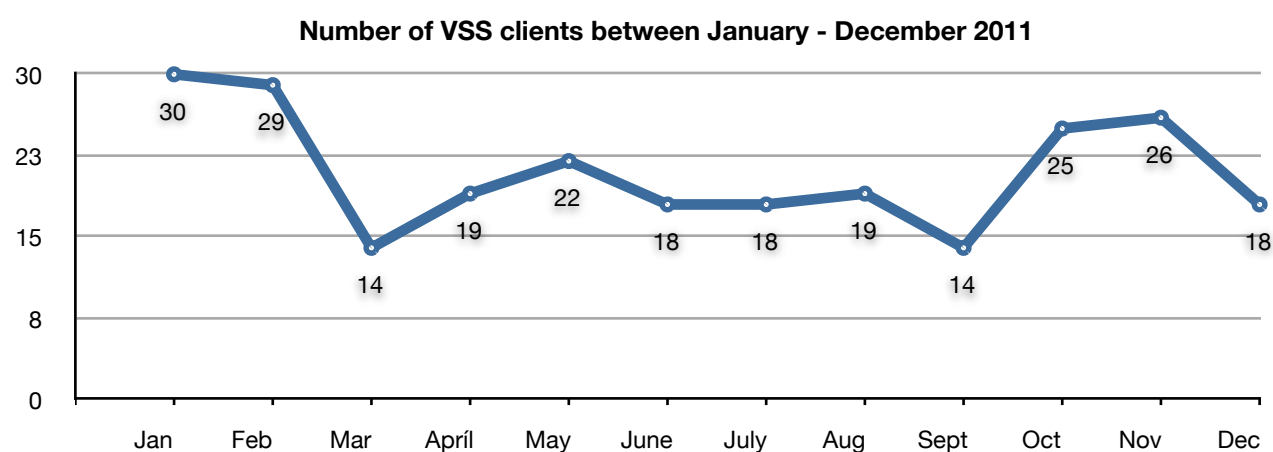
VSS values the cooperation of the judicial authorities because there was an excellent line of coordination in this case. VSS noted that this case was dealt with quickly in comparison with other cases because of the work of VPU, public prosecutor and the district court. VSS was also ready to help the victim by providing legal advice and assist VPU and the Public Prosecution Service to gather relevant evidence and provide

social support aimed at accelerating the formal justice process. The court also summoned VSS to accompany the victim during the trial until the decision was handed down.³⁵

VSS observed that the victim and her family were satisfied with the sentence handed down by the court against the defendant and believe that the sentence is proportional to the crime committed by the convicted person against his own niece. This case shows that the formal justice system can function well and has started to establish public confidence in Timor-Leste. VSS recommends for the judicial authorities and other parties such as the public defenders and private lawyers appointed in specific cases involving gender based violence to work consistently and follow lines of coordination to ensure that justice is provided to vulnerable groups in society.

B. Statistics - VSS cases in 2011

In 2011, VSS provided legal assistance to female and child victims in 252 cases to enable them to access the formal justice system. VSS also gave legal assistance to clients in pre-existing cases. The following statistics show information about VSS clients who were provided with assistance in 2011. Although the cases below do not fully reflect all gender based violence cases in Timor-Leste, this number is a representative figure of those cases in which the VSS provided assistance.



Types of cases handled by VSS between January - December 2011

Case type	Total number of cases	Percentage of the total
Abandonment	21	8.3%
Attempted Rape	2	0.8%
Domestic Violence	177	70.2%
Domestic Violence causing death	1	0.4%
Rape	18	7.1%
Sexual abuse of a minor	33	13.1%
Total	252	100%

³⁵ Pursuant to Article 92.3 of the Criminal Procedure Code.

The table above shows VSS provided assistance in 252 cases registered in 2011. The majority of these cases involved domestic violence. However this table also shows cases involving abandonment, especially abandonment of minors, where the public prosecutor initiates proceedings to secure maintenance from parents who have abandoned their children.

Cases of attempted rape included perpetrators forcing female minors to have sex and the domestic violence cases involved physical and psychological violence in the family sphere. One case of domestic violence causing death involved serious maltreatment with the use of a machete or other hard object. Sexual assault refers to the intent of forcing another person to have sexual relations. Sexual abuse of a minor refers to children under the age of 14, for example forcing the child to touch the perpetrator's body or forcing sexual intercourse.

Sources of referral to VSS during 2011

District	Police VPU	Pradet	VSS	Fokupers	MSS	SEPI	Other	Total
Aileu	8	1	0	0	0	0	0	9
Ainaro	15	1	0	0	0	0	0	16
Baucau	4	1	0	0	0	0	0	5
Bobonaro	16	0	0	0	0	0	0	16
Covalima	35	0	1	0	0	0	0	36
Dili	38	10	4	1	1	1	2	57
Ermera	14	0	0	0	0	0	0	14
Lautem	13	1	0	0	0	0	0	14
Liquiça	2	0	1	0	0	0	0	3
Manututu	1	0	0	0	0	0	0	1
Manufahi	5	0	0	0	0	0	0	5
Oe-Cusse	55	0	0	0	0	0	0	55
Viqueque	19	1	1	0	0	0	0	21
Total	225	15	6	1	1	1	2	252

Referral is a way to help clients access the courts, which also happens to be a decisive factor in responding to violence against women and children. The table above shows the source of referral that enabled victims to access VSS. Most referrals came from the Police VPUs in the districts.

VSS clients in 2011 according to age

Age group	Number of clients	Percentage of total
05-12	15	6%
13-16	41	16%
17-25	54	22%
26-35	64	25%
> 35	64	25%
Don't know	16	6%
Total	254	100%

This table shows that 25% of VSS clients in 2011 were adults, however there were also cases involving minors aged 14 and below who were assisted by the VSS..

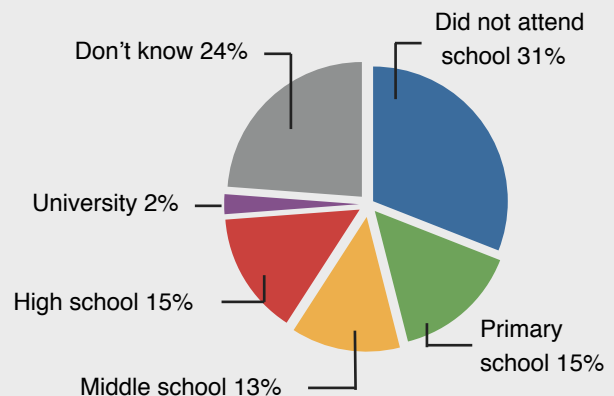
VSS clients in 2011 according to marital status

Marital status	Number of clients	Percentage of total
Married	175	69%
Divorced	3	1%
Single	72	29%
Widowed	2	1%
Total	252	100%

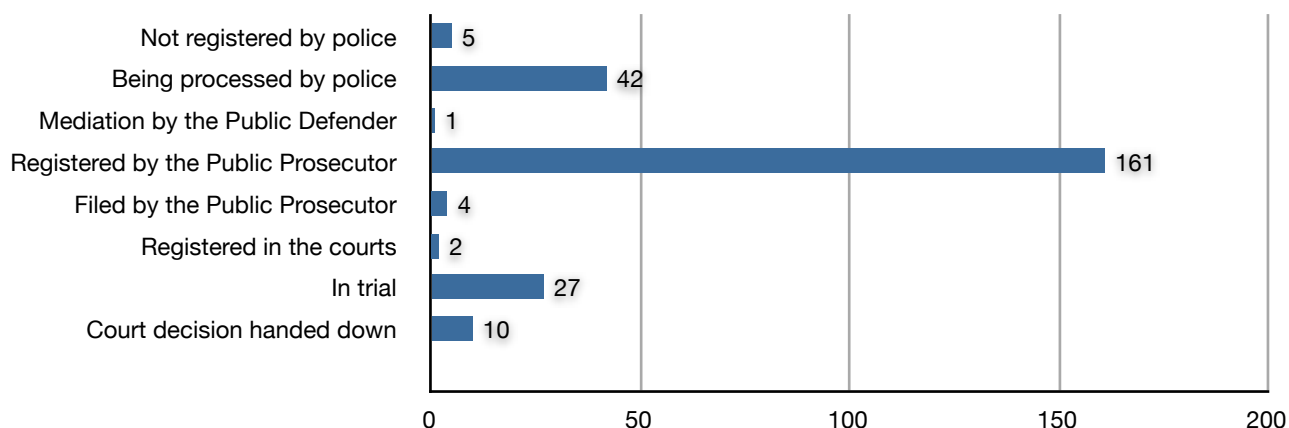
This table shows that legal assistance provided by VSS is not only given to female victims who are married but also to unmarried victims and widows. This is concerning because many VSS clients don't have any confidence and the violence has negatively impacted on their future marriage prospects.

VSS clients according to their level of education

This diagram shows that 31% of VSS clients have no education. This has implications for the work of VSS as it cannot assume that clients can read and write. This information also shows that clients who have education have only basic education as only 2% have studied at university. Therefore VSS clients usually find it difficult to understand their rights and the formal justice system.



Status of VSS cases for January - December 2011



VSS cases registered between 2005-2010 that were finalised in 2011

Status	Total	Percentage
Victim withdrew case	1	2%
Resolved through mediation	3	5%
Referred to Office of the Public Defender	3	5%
Case closed by the Public Prosecution Service	27	48%
Processed at the Oe-Cusse District Court	1	2%
Decided by the Dili District Court	11	19%
Decided by the Baucau District Court	4	7%
Decided by the Suai District Court	4	7%
Decided by the Oe-Cusse District Court	3	5%
Total	57	100%

The two tables above show that there are still many cases that are held up at the administrative level of the Public Prosecution Service due to limited human resources. VSS continues to be concerned because if the formal justice process takes too long it will provide an opportunity for victims to withdraw their cases from the formal legal process.

CONCLUSION AND RECOMMENDATIONS

2011 was a very important year in the justice sector because justice institutions not only worked hard to reduce the backlog of pending cases but also prioritised corruption cases that are technically complex to investigate and made it possible for these cases to be processed by the courts. JSMP also noted other positive steps such as the Court of Appeal starting to allow public access to trials and statistical case information. JSMP also observed that the Dili District Prosecution Unit has started a legal awareness-raising program for the public in Atauro Sub-District which is far from the capital and where it is difficult to access legal information.

Other developments in the justice sector were: the dissemination of information on the justice system by the Ministry of Justice with the involvement of judicial authorities; the rotation of judicial authorities and public defenders to broaden their work experience; the mobile court initiative which continued in the districts and reduced the backlog of cases; and the Public Prosecution Service successfully submitted an appeal on articles 118 and 125 of the Criminal Procedure Code regarding the obligations of the victim to testify in court. However there continues to be conflicting interpretation between judges at the district courts and the Court of Appeal regarding the application of articles 118 and 125 of the Criminal Procedure Code.

Judicial training for justice actors initiated in 2007 has continued and there is separate training for private lawyers so that they can carry out their functions effectively and provide assistance to all citizens. The first stage of theoretical training for private lawyers is finished and currently 7 private lawyers are taking part in practical training for six months in Portugal. Training for court clerks is also underway to improve their understanding of the justice sector. Another significant development is that the community is starting to better understand their rights and obligations as citizens in a democratic nation based on the principle of the rule of law.

Although progress was achieved in 2011, the justice sector still faces serious challenges. These challenges specifically relate to facilities and human resources (both in terms of quality and quantity), including in the Public Defenders Office, court clerks and interpreters. Additionally, limited infrastructure remains a problem.

Based on the analysis contained in this report the following recommendations are offered by JSMP for consideration in the future:

- 1. JSMP encourages the National Parliament and the Council of Ministers to increase and provide adequate opportunities for open public consultations before debating and approving laws in the National Parliament and forwarding them to the President for promulgation.**
- 2. JSMP encourages and urges the President to use his authority effectively, in accordance with the provisions of the Constitution, to consult the public or at least use his legal advisors to examine legislation received from National Parliament before promulgation.**
- 3. JSMP urges the court to ensure that all sentences are executed effectively to ensure justice for victims. JSMP specifically urges the courts and the Public Prosecution Service to take responsibility for the case of militia member Valentim Lávio who was allowed to flee from his obligation to serve the prison sentence handed down against him due to institutional negligence.**

4. JSMP requests the Court of Appeal to ensure uniform interpretation of article 300 of the Criminal Procedure Code to avoid conflicting interpretations by different judicial actors. JSMP urges that all prison sentences be executed before the Court of Appeal issues an alternative decision to avoid incidents like that which occurred in the case of Valentim Lávio.
5. JSMP encourages the courts to apply the Law on Witness Protection in every case before the court, especially in cases involving public authorities or cases that endanger the safety of witnesses because of their specific nature, including cases of gender-based violence.
6. JSMP encourages all district courts to increase the volume of trials conducted by the mobile court initiative.
7. JSMP continues to encourage the courts, the Public Prosecution Service and other judicial actors to maintain their spirit of cooperation to strengthen partnerships with civil society and to consider civil society groups as an important resource to improve and strengthen the justice sector in Timor-Leste.
8. JSMP encourages the Ministry of Justice to give serious attention to the issue of interpreters and interpretation in courts to improve the quality and quantity of court interpretation. In addition, JSMP encourages the Ministry of Justice to develop a Tetum Legal Dictionary to enable all trial processes to be conducted in Tetum, unless there is a specific need to conduct trials in Portuguese.
9. JSMP encourages the National Parliament, with the Ministry of Justice's responsible departments, to amend the application of the transitional provisions in article 68 of Law No. 11/2008 on the Private Legal Profession and Lawyers Training. This is so that private lawyers can continue practising until the total number of lawyers meets the needs of the public and the legal profession.
10. JSMP encourages the Ministry of Justice to give attention to the issues of residence for judicial authorities in the districts, transport for public defenders in the districts and health and hygiene in the district courts.
11. JSMP encourages the Court of Appeal to promote public access, in particular all court proceedings should be open if it is not necessary under the law to restrict public access or participation.
12. JSMP encourages the courts to manage the application of appropriate restrictive measures on defendants of domestic violence in order to protect victims' security during the court process, and to reduce other risks such as victims being exposed to pressure or threats which aim to interrupt the court process.
13. JSMP urges relevant institutions, such as the Ministry of Social Solidarity and Ministry of Education, to fulfil their obligation to implement the Law Against Domestic Violence.
14. JSMP urges the National Parliament to finalise the Law on Legal Aid so that the law can be implemented this term and provide access to the courts for everyone.

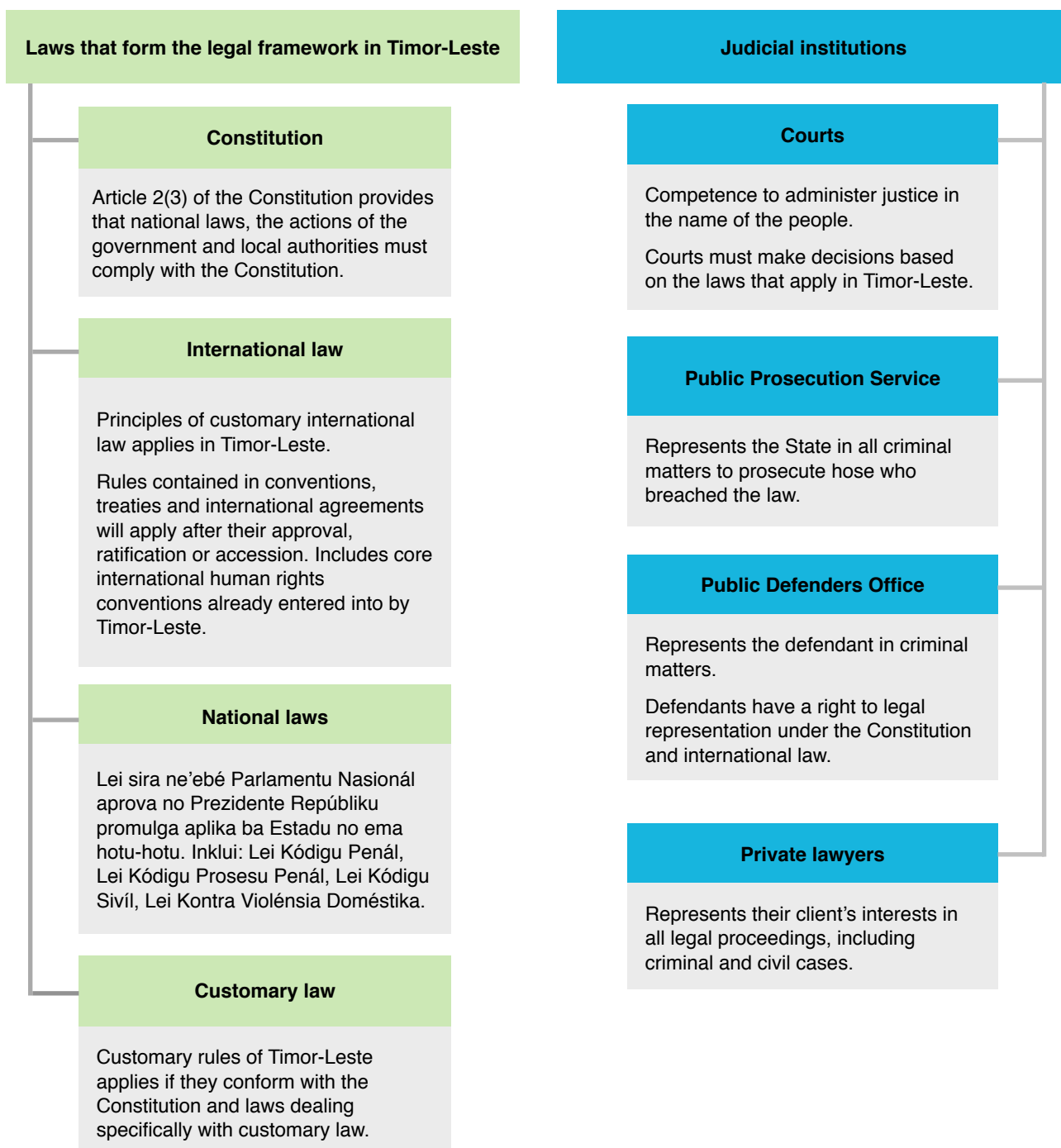
15. JSMP encourages the Ministry of Justice to give attention to the provision of special rooms for victims of sexual violence and incest because often victims and defendants have to sit together outside the court before proceedings commence, and as a result victims do not feel comfortable about testifying.
16. JSMP urges also the Commander of the National Police Service of Timor-Leste to ensure that when members of the Vulnerable Persons Unit are rotated, they provide proper hand-over to new members before leaving.

ANNEX

A. Timor-Leste's legal framework

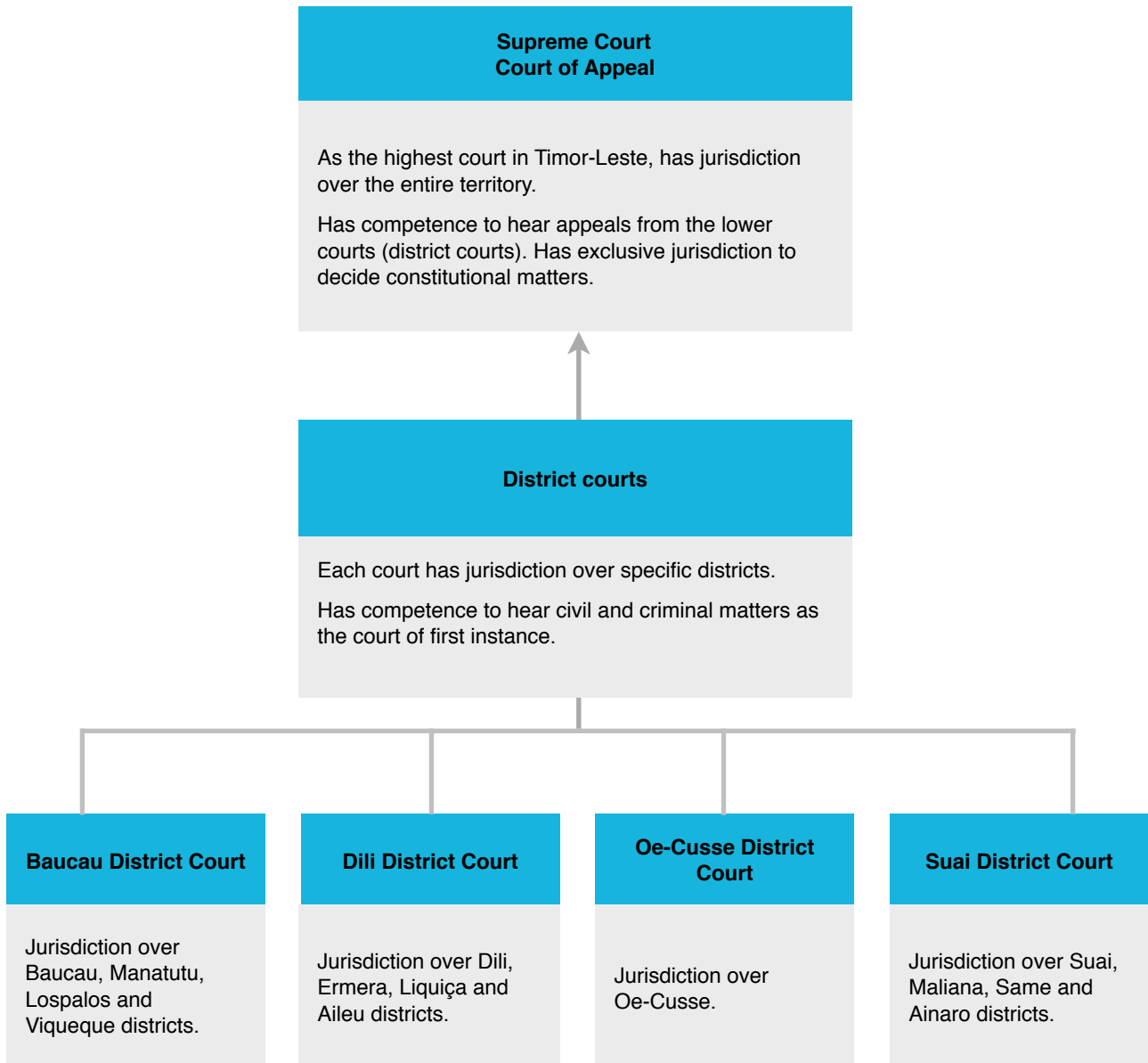
Timor-Leste is a democratic state based on the rule of law.³⁶ The two diagrams below describe the legal system in Timor-Leste..

Timor-Leste's legal system: Laws and institutions



³⁶ Article 1 of the Constitution.

Court system in Timor-Leste



B. Court case statistics

Court of Appeal - 2011

JSMP was unable to obtain case statistics from the Court of Appeal.

Dili District Court- 2011³⁷

Criminal matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	18	34	38	61	86	64	66	51	150	41	29	60	698
Finalised	26	42	50	47	52	60	38	35	39	50	27	52	518
Pending	863	855	843	857	891	895	922	938	1048	1039	1040	1048	1048
Civil matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	10	12	4	20	6	13	28	8	12	16	14	15	143
Finalised	23	11	13	6	9	11	21	4	21	11	7	9	146
Pending	328	329	320	334	331	333	340	344	335	340	347	353	353

Baucau District Court- 2011³⁸

Criminal matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	24	33	13	13	24	18	8	8	8	8	5	7	169
Finalised	10	16	17	16	15	9	30	9	17	31	3	5	178
Pending	113	150	146	143	152	161	139	138	129	106	108	110	110
Civil matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	1	1	2	2	3	4	2	2	5	0	1	2	25
Finalised	0	0	3	0	0	1	0	1	6	0	1	2	14
Pending	56	57	56	58	61	64	66	67	66	66	66	66	66

³⁷ Statistics provided by Malena M.A.I da Piedade, Judicial Secretary, Dil District Court (9 January 2012).

³⁸ Statistics provided by Agostu Soares, Interim Judicial Secretary, Baucau District Court (30 December 2011).

Suai District Court - 2011

Criminal matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	10	9	6	9	6	14	7	6	21	2	9		
Finalised	7	10	10	11	18	14	20	6	9	7	7		
Pending	164	163	159	157	145	145	132	130	142	137	139		
Civil matters													
	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
New cases	2	1	4	1	1	1	1	0	1	0	1		
Finalised	0	2	2	1	1	0	0	1	0	0	2		
Pending	33	32	32	34	34	35	36	35	36	36	35		

Oe-Cusse District Court- 2011

Total criminal cases	Total civil cases	Finalised	Pending
184	11	40	155

C. Statistics from JSMP (Legal Research Unit - LRU) court monitoring

Statistics - cases monitored by JSMP-LRU in 2011

Cases monitored in Dili District Court													
Case type	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
Criminal	5	6	9	8	12	23	23	7	16	36	9	5	159
Civil	0	1	2	1	1	0	6	0	0	1	0	0	12

Cases monitored in Baucau District Court													
Case type	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
Criminal	5	11	3	5	8	10	12	14	19	21	13	13	134
Civil	0	1	0	0	0	0	1	0	2	1	0	0	5

Cases monitored in Suai District Court													
Case type	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
Criminal	0	5	5	0	0	9	8	6	7	20	14	6	80
Civil	0	0	0	0	0	0	0	0	0	0	0	0	0

Cases monitored in Oe-Cusso District Court													
Case type	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Set	Oct	Nov	Dec	Total
Criminal	0	0	0	0	12	0	0	0	8	0	0	0	20
Civil	0	0	0	0	0	0	0	0	0	0	0	0	0

Cases monitored in all courts - total by case type			
	Criminal	Civil	Total by court
Dili District Court	159	12	171
Baucau District Court	134	5	139
Suai District Court	80	0	80
Oe-Cusse District Court	20	0	20
Total by case type	393	17	410

D. List of interviews conducted by JSMP for this report

Court of Appeal

1. José Simões, Chief of Human Resources, Court of Appeal, 23 November 2011

Dili District Court

2. Dr Duarte Tilman, Chief Judge, 23 November 2011
3. Timótio Gusmão, Court Clerk- Head of the Criminal Division, 24 November 2011
4. Dr José Ximenes, Chief of the Dili District Prosecution Service, 25 November 2011
5. Dr Domingos Barreto, Prosecutor, Dili District Prosecution Service, 20 December 2011
6. Dr Sergio Hornay, Public Defender, Public Defender's Office, 29 November 2011
7. Dr Canção Xavier, Defence Attorney, Public Defender's Office, 22 November 2011

Baucau District Court

8. Augusto Soares, Court Clerk, 12 January 2012
9. Dr Gregório de Lima, Defence Attorney, Public Defender's Office, 1 January 2012

Suai District Court

10. Marcelino Sarmiento, Court Clerk, 14 December 2011
11. Joanico da Costa, Clerk, Public Defender's Office, 9 January 2012

Oe-Cusse District Court

12. Dr João Ribeiro, Chief Judge, 1 December 2011
13. Calisto Tout, Defence Attorney, Public Defender's Office, 10 January 2012
14. Dr Afonso Lopes, Public Prosecutor, 11 – 12 January 2012