

**REMARKS OF JUDGE PHILLIP RAPOZA
AT THE LAUNCH OF THE JSMP REPORT ENTITLED:**

***Charging, Trials and Sentencing in Cases of
Sexual Violence in Timor-Leste 2012-2015***

Delivered at:
JSMP Office
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Luis de Oliveira Sampaio, Executive Director of JSMP,

The leadership and staff of JSMP, especially those of you who contributed to the report that is being launched today,

Esteemed guests,

Ladies and gentlemen

I was very pleased to be invited to this event and honored to be asked to say a few words about the significant JSMP report that is being launched today. Before doing so, however, I hope you will permit me to share a personal reflection on JSMP itself. As we all know, the mission of JSMP is as ambitious as it is necessary. And that mission is to promote the values of a democratic society in Timor-Leste by encouraging the development of a system of justice that safeguards fundamental rights; ensures fairness and transparency in the judicial process;

promotes wider and more consistent access to justice; respects the dignity of those who are most vulnerable or who have been victimized; and holds wrongdoers accountable for their actions.

My first contact with JSMP did not occur today or this year or even this decade. My first encounter with JSMP took place in 2003 when I was serving as an international judge on the Special Panels for Serious Crimes, here in Dili. At that time the JSMP was monitoring the trials and other proceedings of the Special Panels and provided important critical analysis of our decisions along with both substantive and practical recommendations on issues arising during trial. They also produced in-depth reports on general issues affecting the serious crimes process and promoted a better and more detailed understanding of our work.

Although JSMP may not have been aware of it at the time, the judges with whom I served, both Timorese and international, paid very close attention to the views expressed by JSMP. I sincerely believe that the work of JSMP made us better judges in the difficult work we had to do and, even if we did not always agree with JSMP or they with us, we always considered what they had to say. I am

equally confident in stating that if JSMP had not been available as a source of observations and critical analysis, the serious crimes process would have suffered. As many of you know, the serious crimes process faced many challenges but without a doubt, those challenges would have been even greater if JSMP had not been on the scene and doing its important work. And for that the serious crimes process continues to owe JSMP a debt of gratitude.

With that in mind, I believe it is fair to say that the report being launched today plays a similar role, although with respect to a different issue, being how the justice system treats cases of sexual violence. Needless to say, this is a very important subject, not only to individual victims whose cases are being prosecuted in the formal justice system, but also to those victims whose concerns about that system may discourage them from reporting instances of gender-based violence to the authorities.

As the report points out, this is not a hypothetical consideration. Although a large number of Timorese women and girls experience gender-based violence, including sexual violence, only a small number formally report what took place.

Consequently, the courts hear only a small number of the actual incidents that occur in Timor-Leste. The report points out, correctly I believe, that there are a number of reasons for women and child victims not to report incidents of sexual violence and not all of them relate to perceptions about the formal justice system. But when that system **is** perceived as not adequately punishing offenders or satisfactorily delivering justice for victims, that fact **does** deter victims from seeking redress in the formal justice system.

The report states that the courts have made “important progress in their handling of sexual violence cases,” which is a very good thing, but significant challenges remain and there is much left to be done. As the report urges, important changes can be made that will strengthen the justice system’s capacity to deal effectively with cases of sexual violations and thereby enhance victims’ trust in that system. These include improvements in prosecutorial charging practices and a better understanding on the part of the courts regarding medical evidence and the inferences that can be drawn from that evidence. Just as importantly, the report discusses the need for a similar awareness regarding cases in which there is a lack

of medical evidence of injuries. In those instances, judges must look at all the available evidence and other sources of proof that demonstrate that a crime took place and that the accused is the culpable party. The report thus underscores the importance of court actors being trained in the use of medical evidence, including the medical forensic protocol. Similarly, the report articulates the need for the courts to be more aggressive in minimizing the victim's contact with the defendant at trial, especially in cases involving minors. Moreover, the report urges the courts to re-evaluate a number of sentencing practices with a view toward ensuring greater accountability on the part of offenders. At the same time, it advocates for greater consistency in sentencing outcomes and suggests means by which this can be achieved.

In all of this, the report acknowledges, and I quote, "the hard work undertaken by prosecutors, defenders and judges, and the challenges they face." As I draw to a close, I want to thank JSMP for that acknowledgment because in my view, each of those elements in the justice system aspires to do the best possible job in their respective positions. But to achieve that goal, comprehensive efforts

must be made to inform, educate and support the justice sector as to how it addresses the challenges presented by cases involving sexual violence. Indeed, some first steps have been taken in this regard. As just one example, when I was here several months ago under the sponsorship of The Asia Foundation, we conducted roundtables with both judges and prosecutors on issues involving the prosecution and sentencing of offenders in cases involving women and children. In fact, we discussed many of the issues raised in today's report. Similarly, earlier this week we conducted an all-day workshop with the judges on the medical forensic protocol and, after I leave this ceremony, I will be participating in a similar workshop for prosecutors.

But please understand me. This does not mean that the work is done or that the JSMP and all of you should lessen your commitment. Here in Timor-Leste, it is common to say "A luta continua." Although that phrase originally applied to the country's struggle for liberation and independence, perhaps now it can be applied to the ongoing challenges that the country faces as a young democracy with an equally young justice system. In that respect the struggle definitely continues, but

with JSMP and all of you determined to make a difference, I am encouraged to believe that progress will continue to be made.

With this report JSMP has provided a framework for describing and analyzing the challenges we currently face in the realm of charging, trials and sentencing in cases of sexual violence in Timor-Leste. Just as importantly, it proposes a way forward for addressing them. These are critically important steps in the right direction. I want to thank JSMP for its vital and significant work in these matters and I especially want to congratulate them on the excellent report that they are launching today.

Once again, I appreciated the opportunity to be part of this event and I am honored to have had the chance to share my thoughts with you. Thank you very much for your attention. Obrigadu barak.