



JUDICIAL **SYSTEM** MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN **SISTEMA** JUDISIÁL

# OVERVIEW OF THE JUSTICE SECTOR 2017



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## EXECUTIVE SUMMARY

In 2017 the Timor-Leste justice sector achieved progress in a number of areas although it still continued to encounter challenges. This progress included: the recommencement of courses at the Legal and Judicial Training Centre that had been suspended since October 2014; amendments to the Statute on the Remuneration of Judicial Magistrates, Public Prosecutors and Public Defenders; and a research and evaluation report from the Committee for Legislative Reform of the Justice Sector.

JSMP has also noted other important achievements such as the courts taking a firm stance and being consistent in continuing to judge cases involving leaders, even though they continue to face pressure from politicians. In addition, progress in the area of human resources saw new court clerk officers finish their training and they have been allocated to each of the courts.

Meanwhile the challenges faced by the justice sector included insufficient funding for the Court of Appeal, and although there was an increase in the Court of Appeal's budget of 14.1 %, there still was not enough to cover all of the needs set out in the plan of the Court of Appeal. Also, language continued to be an issue that made it difficult for people to exercise their rights to access justice, the Law on Witness Protection has not been implemented effectively and there was limited access to hearings at the Court of Appeal. There was also further political interference in the justice sector.

In 2017 JSMP monitored 831 cases,<sup>1</sup> comprising 829 criminal cases and two civil cases. This is lower than the 957 cases monitored by JSMP in 2016. The graph below shows that the number of cases increased in the Baucau District Court and Oecusse District Court and decreased in the Dili and Suai District Courts. Meanwhile the Court of Appeal did not conduct any hearings or just continued to examine proceedings and decide cases based on deliberation. Therefore, throughout 2017 JSMP did not monitor a single case at the Court of Appeal, even though the Court of Appeal managed to complete or decide 292 criminal cases and 75 civil cases.

**Table 1: Total number of cases monitored by JSMP in 2017 compared to 2016**

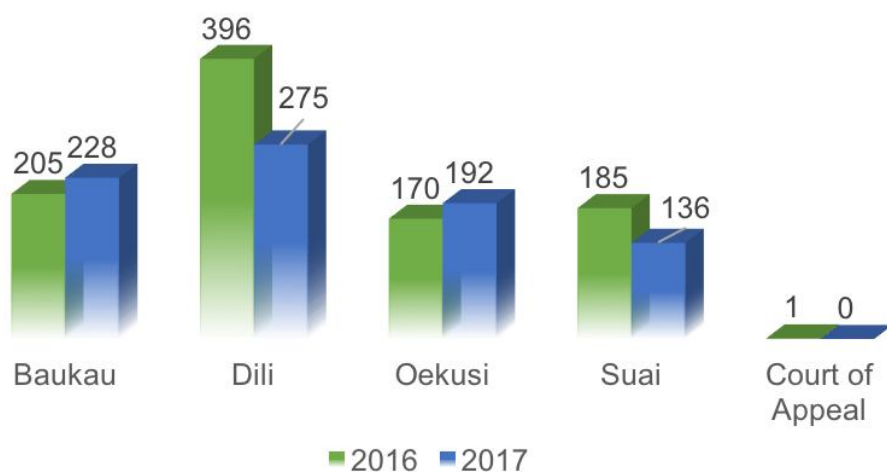
Case type	2016	2017
Criminal	941	829

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<sup>1</sup> Full statistics on cases monitored by JSMP in 2017 including cases tried by the courts are available in Annex A

Civil	16	2
<b>Total</b>	<b>957</b>	<b>831</b>

**Graph 1: Total number of District Court cases monitored by jurisdiction by JSMP in 2016 and 2017**

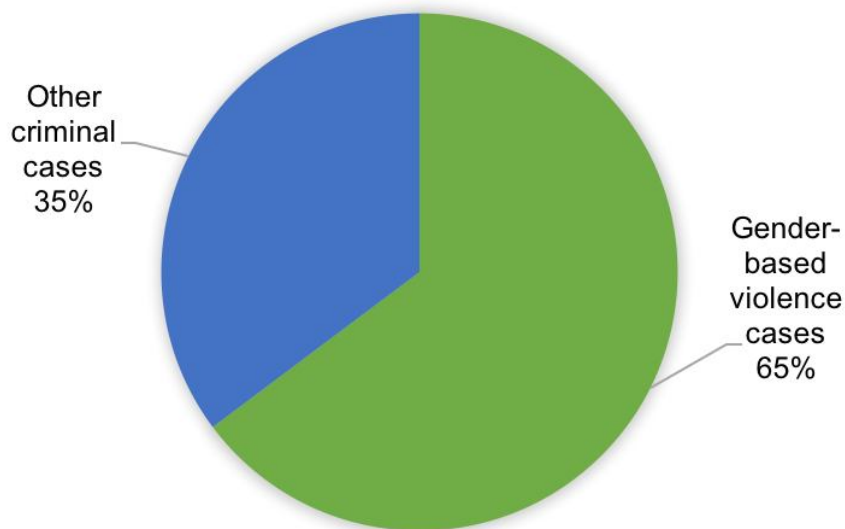


JSMP also monitored cases processed by the Mobile Courts. In 2017 JSMP monitored 147 cases processed by the Mobile Courts in comparison with 145 cases in 2016.

This report also includes analysis on cases involving gender-based violence that were dealt with by the courts. As illustrated by Graph 2, the number of gender based violence cases remained high in all courts, in comparison with other types of criminal cases.

**Graph 2: Gender-based violence cases against women and girls compared to other criminal cases monitored by JSMP in 2017**





When monitoring these cases JSMP observed that in some cases involving domestic violence the courts did not process the matter based on the requirements of the Penal Code.

These facts highlight the need to develop legal guidelines to explain the key elements of articles and to provide guidance for prosecutors on how to recommend appropriate sentences as well as consistency in judges' decisions. It is necessary to implement a system that guarantees effective monitoring of defendants and their compliance with rules of conduct. One step forward was the court's consideration of legitimate self-defence in a case involving a female defendant.

JSMP observed in 2017 that the courts continued to punish defendants found guilty of committing crimes characterized as rape with long prison sentences, and in some cases defendants received 28 years in prison. However in some cases involving minors the prosecutors did not properly discuss and analyse the circumstances of the crime and did not charge the defendant based on the seriousness of the crime committed. Also, in most cases characterized as rape the courts did not order defendants to pay civil compensation to victims. In 2017 there were 16 cases where the perpetrator of sexual violence received a prison sentence but only in one case the courts ordered the defendant to pay civil compensation to the victim. In 65% of all cases involving minors the perpetrator of the crime was a family member, and most defendants were the victim's father.

In 2017 JSMP also analysed the Draft Law on Child Protection and believes that some provisions of this draft law are unclear. Even though this draft law was not discussed and approved in the National Parliament, JSMP still observed that the preparation of this draft law did not include thorough consultation with key and relevant stakeholders. JSMP made a submission to the National Parliament and the MSS and requested for this draft law to be translated into Tetum and for in-depth public consultation to be conducted, especially with those institutions that work on children's rights and child protection.

In 2017 JSMP analysed decisions handed down by the Court of Appeal in some cases involving State authorities. JSMP monitored 10 cases of corruption in 2017.<sup>2</sup> Prison sentences were imposed on the defendant João Cancio, former Minister of Education and, Domingos Caero, Secretary of State for Public Works. Also, JSMP analysed the case involving the defendants Tiago and Tammy Guerra. JSMP analysed the proceedings in this case from the moment pre-trial detention was imposed in 2014 until the aforementioned persons absconded from justice in Timor-Leste when their case was still at the appeal stage.

JSMP hopes that this 2017 Overview of the Justice Sector can inform the public on the current situation of the justice sector in Timor-Leste, and progress achieved and the ongoing challenges.

Through this report JSMP provides recommendations to relevant institutions for their consideration. Some of these recommendations are almost the same as recommendations from 2016 because there have not been any significant changes.

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

#### **Key developments in the justice sector**

1. Request for the Legal and Judicial Training Centre to continue including complementary materials on the rights of women and children in the learning curriculum. Thorough instruction on these materials should be given to the trainee judges, prosecutors and public defenders.
2. Request for the Legal and Judicial Training Centre to continue running courses to increase the number of court actors in the future to match government plans to establish courts in each municipality.
3. The relevant institutions need to consider the recommendations from the Committee for Legislative Reform of the Justice Sector as mentioned in the Committee's report.
4. The mandate of the Committee for Legislative Reform of the Justice Sector should be extended to follow up the recommendations contained in the Committee's report.

#### **Independence of the courts**

5. Request for the Parliament and Government to stop interfering in the judicial sector that is an independent organ of state.
6. Request for all people to use the applicable legal mechanisms if they do not agree with a decision of the court of first instance by lodging an appeal with the Court of Appeal.

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<sup>2</sup> In 2017 JSMP monitored 10 cases of corruption: decisions were handed down in 8 cases, and 2 cases are ongoing. In this report JSMP will only discuss 8 cases that have been decided. Please refer to Annex B.

7. Request for the National Parliament to amend Law No. 11/2004 on amending the Judicial Magistrates Statute to ensure consistency with the Constitution and to avoid confusion in the process of appointing the President of the Court of Appeal.
8. JSMP recommends for politicians to avoid politicizing and using party politics in relation to judicial institutions and to avoid influencing or exerting political pressure. It is important to remove political influence to guarantee that judicial institutions can exercise their role independently and impartially in accordance with the Constitution and the law.

#### **Resources in the justice sector**

9. The Legal and Judicial Training Centre needs to continue to function to increase the number of judicial actors and needs to prioritise the quality of training.
10. Provide training to increase the knowledge and understanding of legal terminology for translators who speak the official languages and those who speak regional languages.
11. Continue training for court actors, judges, prosecutors and public defenders to ensure the quality of prosecution, defence and decision-making.

#### **Courts**

12. Establish a court in each municipality, especially in those districts that have been using the mobile courts, to ensure there is a safe environment to hear sensitive cases.
13. Request for the Court of Appeal to conduct a hearing when announcing its decision and to re-examine evidence through a hearing so the parties can properly understand their case.
14. JSMP recommends that in the future the Court of Appeal should hear the parties when re-examining evidence so that the parties can properly understand proceedings in their case, and find out and receive proper information on the grounds why they lost or won the case.
15. Request for the court to increase the knowledge of interpreters regarding juridical terms, in Tetum, Portuguese and other languages.
16. Recruit more official interpreters for the official languages of Timor-Leste and other international languages and local languages.



### **Gender equality**

17. JSMP requests for the prosecution and the courts to consider the relevant facts and circumstances in such crimes and the potential consequences that could affect female victims.
18. JSMP again requests for the Public Prosecution Service to develop legal guidelines to explain the key elements of Articles 145, 146 and 154 of the Penal Code, and provide examples of cases that use the correct article to charge defendants, and to provide guidance on sentences that should be recommended by the prosecution.
19. The prosecutor needs to be proactive in assessing the facts produced during the trial and must ensure that perpetrators of crime are investigated and held responsible for the crimes they have committed.
20. In future cases all of the courts can consider legitimate self-defence as an important factor in their decision-making.
21. The Ministry of Justice or the courts need to develop guidelines on sentencing in cases of domestic violence relating to the application of rules of conduct attached to suspended prison sentences.
22. The courts should apply rules of conduct in more cases and order convicted persons to report to local authorities such as the village chief. The Ministry of Justice should develop a mechanism to facilitate this process, including the provision of training to local authorities to implement this process through monitoring and effective reporting to the courts.
23. If the court considers that a fine is the best option, the court needs to comply with the conditions set out in Article 38 of the Law Against Domestic Violence.

### **Cases of sexual violence**

24. Guidelines should be developed on sentencing to guarantee consistency in sentencing in cases of sexual violence. Guidelines should set out the general principles for sentencing in cases of sexual violence, aggravating and mitigating circumstances, for example rules for those who are repeat offenders, guidelines on alternative punishments and information on how to calculate civil compensation.
25. The courts should apply civil compensation in addition to prison sentences against defendants who have committed crimes involving sexual violence.

### **Minors in the justice system**

26. The prosecution should choose a specific article in addition to the associated facts as provided for in the Penal Code as relevant circumstances for aggravation.
27. Incorporate a specific article on incest in the Timor-Leste Penal Code, which does not require consideration of the victim's consent or age.

28. Provide a translation of the draft law on Child Protection in Tetum and English and hold public consultation especially with institutions working in the field of child protection and children's rights so that all people can contribute to producing a Draft Law that will truly respond to the needs of children in Timor-Leste.
29. The Ministry of Social Solidarity and Committee A of the National Parliament should reschedule and discuss the Draft Law on Child Protection as a legislative priority.

#### **Witnesses in the justice system**

30. JSMP continues to encourage the Government to immediately take steps to implement the Law on Witness Protection through the allocation of funds for equipment based on the measures set out in this law.
31. JSMP recommends for the courts to implement the same measures to protect witness and victims from coercion, threats or violence.

## **INTRODUCTION**

This report provides a general description of the justice sector in Timor-Leste in 2017. It collates results from JSMP's observations and analysis of the developments and challenges that occurred in the justice system in 2017. This report includes recommendations addressed to relevant institutions for their consideration, in order to improve the justice system in the future.

JSMP would like to congratulate the judicial actors because they have worked hard and displayed extraordinary dedication during 2017, even though they have faced a range of challenges and limitations. JSMP also would like to express its appreciation to the judicial actors for giving their time to collaborate by providing relevant data to facilitate the production of this report. This report is structured as follows:

### **Section 1 – the state of the justice sector in 2017**

This section discusses key developments and challenges faced by the justice sector in 2017. This section focuses on the recommencement of the Legal and Judicial Training Centre, the report of the Committee for Legislative Reform of the Justice Sector that provides recommendations on issues related to women and children, and the Statute on the Remuneration of Judicial Magistrates, Public Prosecutors and Public Defenders. This section also includes a discussion on concerns about ongoing interference from politicians, which impacts on the independence of the courts.

This section also discusses the resources and training available to the justice sector in 2017, results from JSMP monitoring of the Mobile Courts and the Court of Appeal, as well as the challenges that the courts continue to face in relation to the issue of language.

### **Section 2 – Gender Equality**

The second section focuses on the important issue of gender equality including analysis of cases involving violence against women, with a specific focus on cases of domestic violence and sexual violence. This section also analyses sentencing trends in 2017.

### **Section 3 – Minors in the justice sector**

The third section discusses juvenile access to justice and key developments in 2017. This includes the need for prosecutors and the courts to identify specific articles in addition to other associated facts provided for in the Penal Code as relevant aggravating circumstances. This section also discusses the need for prosecutors and the courts to order defendants to pay civil compensation to victims in accordance with Article 18 of the Constitution and to give protection to minors.

### **Section 4 – Witnesses in the justice sector**

The fourth section focuses on the need to give proper protection to witnesses and victims. This section discusses a range of protective measures for witnesses and victims that are easy and affordable for the State to implement. This section also provides information on the implementation of the Law on Witness Protection.

### **Section 5 – Cases involving State authorities**

The fifth section discusses decisions from the Court of Appeal in cases involving State authorities, as well as the recent case involving the defendants Tiago Guerra and Tammy Guerra.

This report ends with a conclusion that provides a useful summary of the findings and recommendations to improve the justice system in the future. The last part includes annexes that contain statistics, and relevant information about cases monitored by JSMP and proceedings in the courts.

## 1. STATUS OF THE JUSTICE SECTOR IN 2017

### 1.1 KEY DEVELOPMENTS IN THE JUSTICE SECTOR

Three key developments in the justice sector in 2017 are as follows:

- Reintroduction of the Legal and Judicial Training Centre
- Recommendations from the Committee for Legislative Reform of the Justice Sector relating to women's and children's issues
- Statute on the Remuneration of Judicial Magistrates, Public Prosecutors and Public Defenders

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#### REINTRODUCTION OF THE LEGAL AND JUDICIAL TRAINING CENTRE

On 10 May 2017 the Legal and Judicial Training Centre<sup>3</sup> recommenced its training activities for the 4th group of trainee judges, prosecutors and public defenders (52 in total). All of them started training in May 2017, and previously sat an admission test in October 2014, but could not start training at that time because the Government expelled international trainers from Timor-Leste.

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<sup>3</sup> Pursuant to MINISTERIAL DIPLOMA No. 43/2016, 27 July 2016, the Judicial Training Centre (JTC) changed its name to the Legal and Judicial Training Centre. The aim of changing the name was to reorganise the structure of the Legal and Judicial Training Centre, to strengthen its identity as an institution of excellence in the field of judicial and legal training and to create the appropriate organic, organisational and functional conditions to carry out with the important mission given to the Legal and Judicial Training Centre. The Legal and Judicial Training Centre has a Study and Research Centre and the Office of Legal Support provides assistance during initial and ongoing training of judicial magistrates, public prosecutors and public defenders, please refer to:  
[http://www.mj.gov.tl/jornal/public/docs/2016/serie\\_1/SERIE\\_I\\_NO\\_29.pdf](http://www.mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_29.pdf)

JSMP is happy that the Legal and Judicial Training Centre is open and is continuing to provide training. It is hoped that the training of these 52 trainee judges, prosecutors and public defenders will help the Legal and Judicial Training Centre to respond to the shortage of human resources in the courts. It is also hoped that increasing the quantity and quality of human resources in the courts will accelerate the processing of cases and improve the quality of arguments in the courts and the quality of judicial decisions.

The Legal and Judicial Training Centre was forced to close in October 2014, because the previous government expelled some international trainers, and ended the agreement on judicial cooperation with Portugal.<sup>4</sup> It took nearly three years to re-establish judicial cooperation with Portugal. In February 2016 the Minister of Justice from Portugal and the Minister of Justice from Timor-Leste signed a cooperation agreement with Portugal to recommence providing assistance for training, supervision and capacity building to the justice sector in Timor-Leste.

Based on this cooperation agreement, in early 2017 the Government of Timor-Leste managed to bring in two international trainers from Portugal as judges trainers (1 female and 1 male). In addition, there were also two other trainers from Brazil (1 female and 1 male) who were assigned to work with the Office of the Public Defender as mentors. These four trainers together with two other Portuguese language teachers provided training and taught Portuguese language to trainees participating in the 4th course who will complete their learning in 2018.

JSMP observed that there has been a change in the materials that the trainees have been learning in the Legal and Judicial Training Centre. Even though the main materials cover criminal law, criminal procedural, civil law and civil procedure, the Legal and Judicial Training Centre also provides other complementary materials including about family law, domestic violence, children's rights and international conventions such as CEDAW and the Convention on the Right of the Child.

JSMP hopes that the trainee judges, prosecutors and public defenders will appreciate these specific materials and the provision of these training materials will increase their sensitivity towards cases involving vulnerable people such as women and children.

#### **Recommendations**

1. Request for the Legal and Judicial Training Centre to continue including complementary materials on the rights of women and children in the training curriculum. Thorough instruction should be given to the trainee judges, prosecutors and public defenders.
2. Request for the Legal and Judicial Training Centre to continue running courses to increase the number of court actors in the future to match government plans to establish courts in each municipality.

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<sup>4</sup> JSMP Thematic Report on the "The dismissal of international officers and advisors working in the judicial sector of Timor-Leste", available at: [http://jsmp.tl/wp-content/uploads/2012/05/Relatorio-konaba-demisaun-ofisial-judisial-internasionalFINAL\\_TETUM1.pdf](http://jsmp.tl/wp-content/uploads/2012/05/Relatorio-konaba-demisaun-ofisial-judisial-internasionalFINAL_TETUM1.pdf)

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## RECOMMENDATIONS FROM THE COMMITTEE FOR LEGISLATIVE REFORM OF THE JUSTICE SECTOR RELATING TO WOMEN'S AND CHILDREN'S ISSUES

Pursuant to Government Resolution No. 30/2015, 26 August 2015, the Committee for Legislative Reform of the Justice Sector was mandated to engage in legislative reform and to assess the existing laws and their implementation. In July 2017 the Committee managed to produce an important report based on research of the laws in force and those operating in the justice sector. The findings of this research were collated in a report entitled "The Courts in Timor-Leste: challenges for the developing judicial system."<sup>5</sup> This report covered a range of themes relating to the justice sector and legislative issues. However, for the purposes of this OJS report, JSMP has identified a few specific areas that relate to JSMP's research and recommendations to date. JSMP is happy with the work of the Legislative Reform Committee because in its report "The Courts in Timor-Leste: challenges for the developing judicial system" the Committee managed to identify a number of crucial justice issues for consideration. Some of the issues taken up by the Committee have been questioned by JSMP for some time and JSMP has demanded for the competent institutions to give consideration to these issues.

The research presented by the Committee in its report conveyed a lot of the very same concerns that JSMP took up in its previous Overview of the Justice Sector reports (2016, 2015, 2014 etc), and also in its advocacy over a number of years. These issues have included the implementation of the Law Against Domestic Violence, the application of additional responsibilities for suspended sentences in cases of domestic violence, the advantages of the mobile courts, additional and regular training for judicial actors, the reintroduction of the Legal and Judicial Training Centre, and concerns about inadequate allocations in the State Budget for the justice sector.

### Recommendations on the Law Against Domestic Violence (LADV)

The Committee for Legislative Reform considered that the Law Against Domestic Violence is recognised by the public and has political support to combat domestic violence. The Committee also recognised that the implementation of the Law Against Domestic Violence is dependent on the existing strategy to disseminate this law. JSMP has also previously recommended the dissemination of information about the Law Against Domestic Violence and other important laws. The Committee also gave consideration to important laws to help victims make decisions based on this information when presenting a complaint to the police and the Public Prosecution Service. Research from the Committee found that many women are not aware that they are victims of crime. Therefore, the Committee also recommended that it is necessary to give special attention to the issue of violence against children when disseminating laws to prevent and combat violence against children and to raise awareness in society about human rights, and also

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<sup>5</sup> Report from the Committee for Legislative Reform of the Justice Sector entitled "The Courts in Timor-Leste: challenges in the developing judicial system", available at: [http://www.crl.gov.tl/sites/tlcrf/files/docs/2017/formal\\_2017\\_08\\_11\\_s.pdf](http://www.crl.gov.tl/sites/tlcrf/files/docs/2017/formal_2017_08_11_s.pdf)



the rights of women and children. The Committee recognised that even though civil society has provided a lot of training to members of the community, awareness raising and training needs to continue and needs to be further strengthened.

While exercising their mandate, one member of the Committee had a plan to make revisions to the Law Against Domestic Violence because he thought there were biased decisions in many cases, with outcomes that caused discontent in the household. However after completing this research, the Committee reported that based on interviews with many stakeholders and participants they recommended for crimes of domestic violence to continue to be categorised as a public crime. This removes any possibility to annul this law. The Committee recommended to prioritise and continue prevention efforts and to disseminate information about the phenomena of crimes of domestic violence. Awareness raising must be conducted in the community with different age groups and for both men and women. Awareness raising needs to be conducted in schools, especially secondary schools and universities, because these are the appropriate places to raise awareness and introduce collective and national efforts to combat crimes of domestic violence and promote awareness about respect for human rights.

JSMP is happy because the Committee did not recommend amendments or revisions to crimes of domestic violence. Most victims of domestic violence are women. It is important that victims of domestic violence feel secure and comfortable to seek justice through formal channels. Based on its observations, JSMP has noted that many cases involving women as victims are resolved through informal justice and often these avenues are not favourable to women victims.

*Suspended prison sentences without applying additional responsibilities or rules of conduct in most crimes of domestic violence*

In relation to this issue, the Committee's recommendations are the same as the observations and recommendations made by JSMP for a number of years. The Committee was concerned that when the court applies suspended prison sentences without additional responsibilities or rules of conduct, it makes defendants feel that they have not been convicted and other people believe that the perpetrator has not been punished or is free because he/she returns home and there is no real obligation to monitor the defendant during the period of suspension. This has serious effects, in particular because there is no institution to monitor the convicted person during the period of suspension. Therefore, as recommended by the Committee, JSMP continues to request all of the courts to apply appropriate rules of conduct when a penalty has been suspended in a case of domestic violence. This is necessary in order for the law to have a deterrent effect on domestic violence and strengthen the faith of citizens in the formal justice system and the courts.

The JSMP report entitled: "Sentencing and Domestic Violence: Suspended prison sentences with conditions" launched on 20 December 2017,<sup>6</sup> discussed concerns about the application of suspended sentences in most cases of domestic violence in the courts.

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<sup>6</sup> JSMP Thematic Report on 'Sentencing and Domestic Violence: Suspended prison sentences with conditions' - December-2017, available at: <http://jsmp.tl/wp-content/uploads/2012/05/17.12.17-FINAL-Report-on-suspended-sentences-with-conditions-TETUM.pdf>

### Other issues

The Committee also recommended for the Mobile Courts program to continue and to be strengthened, considering the limited economic capacity of community members, and the poor condition of public roads and public transport which contributes to distancing members of the community from justice. The Committee recognised that financial dependency on UNDP to support the Mobile Court is a challenge for the implementation of this program. JSMP always participates and observes the courts when they implement the mobile courts in the districts and JSMP has also recognised that this program can bring justice closer to the people in rural areas. However JSMP requests for the courts to focus on the issue of the quality of decisions, and not just quantity, when hearing cases. In addition, JSMP also recommends for the courts to choose locations to conduct trials that are more secure and comfortable for mobile courts and ensure that mobile courts maintain their credibility and have the same quality as trials held in the district courts. This is very important in cases characterized as sexual violence cases and for those involving juveniles.

The Committee's Report also recommended comprehensive training for all court actors to assist the courts to be more democratic, efficient, active, and to help increase their quality. In 2017, JSMP's observed that judicial actors continued to participate in additional training to improve and increase their capacity, especially regarding transnational crimes such as drug crimes and money laundering.

The Committee's report also raised concerns about the continuation of the Legal and Judicial Training Centre. The Committee found that the trainees at the training centre had difficulties properly understanding Portuguese. The Committee recognised that there is a lack of knowledge about Portuguese language, because private universities do not use the official language as the language of instruction during the learning process.

The Committee's research also found that funding was insufficient in the judicial system. Therefore the Committee recommended to increase the budget in the justice sector and recommended for the judicial bodies to have autonomy in administering their budget. In relation to this issue, JSMP has also recommended for each institution to administer its own funds based on its own needs.

JSMP believes that the findings of the research carried out by the Committee have confirmed many of the concerns conveyed by JSMP to date through its reports to the competent authorities of the State. JSMP also agrees with the thoughts of the Committee when it stated that for the courts to function well, it's not enough to just have people with the relevant qualifications, but they need to have management skills too.

### **Recommendations**

3. The relevant institutions need to consider the recommendations from the Committee for Legislative Reform of the Justice Sector as mentioned in the Committee's report.
4. The mandate of the Committee for Legislative Reform of the Justice Sector should be extended to follow up the recommendations contained in the Committee's report.

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## STATUTE ON THE REMUNERATION OF JUDICIAL MAGISTRATES, PUBLIC PROSECUTORS AND PUBLIC DEFENDERS

On 25 September 2017 the President promulgated the first amendment to Law No. 10/2009, 5 August, on Statute on the Remuneration of Judicial Magistrates, Public Prosecutors and Public Defenders. The National Parliament approved this statute on 14 August 2017.

In the first amendment there were some changes made that corresponded with recommendations made by JSMP such as regarding salary based on professional experience and seniority.<sup>7</sup> JSMP is happy because this law sets out salary variations based on seniority. In addition, other changes were made to the exclusivity allowance, and free medical assistance.

Even though these changes corresponded with some of JSMP's recommendations, there are still some issues that remain unclear and have not been implemented properly.<sup>8</sup> One issue is found in the first clause (section) on free health treatment. This law explains that all court actors are entitled to free treatment, and they receive this free treatment like other holders of positions in sovereign organs, but it is not clear if this free treatment is available only in-country or also overseas. The second issue relates to the issue of seniority, as this law recognises seniority, but its effect is unclear. Namely, does it start from the date this law was published in October 2017, or when the staff member started his/her career as a judge, public prosecutor and public defender. Therefore, even though this law recognises seniority, it continues to remain unfair on longer serving court actors. Many of them started in 2001, but this law does not clearly define how to quantify their commitment for many years or whether or not it applied equally for new magistrates who just started their work three years ago.<sup>9</sup>

Previously JSMP also mentioned that judicial actors had demanded different treatment and consideration for long serving magistrates or newly appointed magistrates, because all of them receive the same remuneration, without considering their experience or the duration of their professional service.

In addition to seniority, judicial actors also questioned the respective positions of Judicial Magistrates and Public Prosecutors. In its opinion,<sup>10</sup> JSMP analysed the position of Judicial Magistrates and Public Prosecutors and JSMP believes that the courts are sovereign organs, because the courts administer justice. Even though the Timor-Leste Constitution includes judicial institutions under a single heading, this does not mean that the Public Prosecution Service and Office of the Public Defender are sovereign organs. They perform an essential function for formal

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<sup>7</sup> This document is available at: [http://www.mj.gov.tl/jornal/public/docs/2017/serie\\_1/SERIE\\_I\\_NO\\_39.pdf](http://www.mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_39.pdf), article 7 on Criteria to Calculate the Salary of Judicial Magistrates, Article 8 on Criteria to Calculate the salary of public prosecutors, and Article 10 on Criteria to Calculate the salary of Public Defenders.

<sup>8</sup> Interview with a senior judge on 12 February 2018

<sup>9</sup> Final swearing-of court actors in 2014

<sup>10</sup> [http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu\\_L.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu_L.pdf)

justice to guarantee justice. This means they also contribute to the functioning of the justice system, however not in terms of the administration of justice and they do not make decisions about justice.<sup>11</sup>

## 1.2 INDEPENDENCE OF THE COURTS

### POLITICAL INTERVENTION IN THE JUDICIAL SYSTEM IN THE CASE OF EMILIA PIRES

Judicial independence is an important element of democracy and the rule of law. In democratic nations the principle of judicial independence is a key factor in guaranteeing that the courts function freely without any form of pressure and interference from political powers. The principle of judicial independence is also important to guarantee that all courts can administer justice in accordance with the law and the Constitution. Article 119 of the Timor-Leste Constitution states that judicial institutions (the courts) are independent and subject only to the Constitution and the law. However, sometimes the courts in Timor-Leste continue to suffer from political interference.

There are some concrete examples and experiences of this. For example, on 25 January 2017, the Minister of Planning and Strategic Investment, Xanana Gusmão, wrote a letter to express his solidarity with the defendant Emilia Pires<sup>12</sup> in relation to the Dili District Court's decision against her on 20 December 2016.<sup>13</sup> In that letter, Minister Gusmão considered Emilia Pires and the

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<sup>11</sup> In-depth analysis on the Statute on the Remuneration of Judicial Magistrates, Public Prosecutors and Public Defenders is available on the JSMP website: [http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu\\_L.pdf](http://jsmp.tl/wp-content/uploads/2013/03/Paraser-baremunirasaun-no-rekrutamentu-Autor-judiciariu_L.pdf)

<sup>12</sup> Emilia Pires was the former Minister of Finance. On 20 December 2016 she was convicted for the crime of corruption committed in 2012, when she was involved in the awarding of a contract to her husband. However, while the case was being heard at the Dili District Court, Emilia Pires fled to Portugal.

<sup>13</sup> On 20 December 2016 the Court announced its decision in this case and stated that the actions of the defendants fulfilled the elements of the crime of economic involvement in business pursuant to Article 299.1 of the Penal Code. Also, the Court decided that the defendants were guilty for violating the law on procurement. However, the court acquitted the defendants from the crime of intentional mismanagement pursuant to Article 274 of the Penal Code. The court also decided that the two defendants did not cause the State to suffer a financial loss pursuant to Article 299.2 of the Penal Code. The court imposed a prison sentence of 7 years against Emilia Pires and a prison sentence of 4 years against Madalena Hanjam (former Vice-Minister of Health). Case No. 1212/12.PDDIL; JSMP, 'Dili District Court imposes 7 years in prison against the former Minister of Finance and 4 years in prison against the former Vice Minister of Health, 'JSMP: sentence against the convicted person Emilia Pires might have no effect- 23 December 2016' (23 December 2016), available at: [http://jsmp.tl/wpcontent/uploads/2016/01/PrDesizaunbaKazuHanzamnoEMILIA\\_Tetum.pdf](http://jsmp.tl/wpcontent/uploads/2016/01/PrDesizaunbaKazuHanzamnoEMILIA_Tetum.pdf)

former Vice-Minister for Health, Madalena Hanjam, to be victims of injustice within the justice system of Timor-Leste. Minister Gusmão accused court actors of not understanding Portuguese language but yet still signing a ruling written in Portuguese that they didn't understand. The letter from Minister Gusmão also raised other serious allegations against the then President of the Court of Appeal, Guilhermino da Silva, and the Prosecutor General, Jose Ximenes. There was no formal response or clarification from these two figures in relation with these allegations. Even though the letter was not addressed directly to the court, and was submitted through the LusaNewsagency, the contents of this letter related to and targeted the judicial services because this letter was full of criticism against the functioning of the justice sector.

Regarding the case to which the letter referred, the court of first instance (Dili District Court) convicted the defendant Emilia Pires and imposed a prison sentence of 7 years, and the defendant Madalena Hanjam received a prison sentence of 4 years. The legal representatives for the two defendants, as well as the Public Prosecution Service, both lodged appeals to the Court of Appeal in January 2017 because they did not agree with this decision. In its appeal, the Public Prosecution Service requested for the Court of Appeal to increase the penalty against the two defendants to 10 years for Emilia Pires and 7 years for Madalena Hanjam and also requested compensation for the State. Lawyers for the two defendants lodged an appeal because they believed that the panel of judges of the Dili District Court issued a decision that deviated from the facts in the indictment and also from witness testimony that was heard during the trial. By the end of 2017 the Court of Appeal had not yet reached a final decision in this case.

From a procedural perspective this appeal means the case has not been resolved yet, or as yet there is no decision carrying the full force of the law. Therefore there is no justifiable reason to present biased criticism and observations before this case has been finalised by the Court of Appeal. This letter creates a negative impression and perception towards the credibility of judicial bodies because the criticism focuses on a specific case without giving reasonable consideration to the efforts of the judicial sector and the challenges it faces.

In addition to interference from Minister Xanana Gusmão, members of parliament also questioned the credibility of the trial process and decision in the case involving Emilia Pires. This concern was raised by MP Arão Noe and MP Hugo da Costa (President of the National Parliament). The two of them are members of the CNRT party, together with the Minister of Planning and Strategic Investment, Xanana Gusmão. MP Arão alleged that the ruling in the case of Emilia Pires was mafia-like. Meanwhile MP Hugo da Costa considered the open letter from Minister Xanana Gusmão as a personal expression on a number of issues. In addition to the criticism of these two politicians, the defendant Emilia Pires also sent a letter to the President of the Republic, Taur Matan Ruak, asking for the establishment of an international committee of

experts to examine her case and other cases because this former Minister did not have confidence in the credibility of the judicial system and its procedures including the decision from the court of first Instance in her case.

JSMP strongly condemns politicians who continue to exert pressure and intervene in the judicial system, because such actions contravene principles of judicial independence set out in Article 119 of the Constitution on the separation of powers,<sup>14</sup> equality before the law<sup>15</sup> and other principles guaranteed in the Timor-Leste Constitution and obligations set out in international laws ratified by Timor-Leste.

JSMP is also concerned about the attitude of politicians who continue to intervene in the work of judicial bodies.<sup>16</sup> These types of interferences undermine the judicial institutions and reduce public confidence in judicial independence and the functioning and credibility of judicial institutions. Interference in the judicial system also represents a serious violation of principles in the constitution, especially the principles of universality and equality before the law. The letter and interfering commentary called particular attention to the case of the former Minister Emilia Pires in order to discredit and undermine the judicial authorities who have been administering the judicial system for a number of years.

The Timor-Leste legal framework guarantees that all citizens have the right to contest or object to any case taken to court. However when contesting errors in judicial decisions, they have to be presented through the appropriate legal mechanism in accordance with the applicable law. This legal mechanism requires the lodging of an appeal to the Court of Appeal if the parties who are involved and affected by this process do not agree with the decision.

Although our judicial system is facing a range of challenges and limitations, any citizen who faces justice needs to properly use the applicable legal mechanisms to defend his/her case within the scope of existing procedures. JSMP also believes that the request of the defendant Emilia Pires to the President to establish an international commission of experts to examine or inspect the functioning of the justice system or the courts and the judicial magistrates is redundant because the defendant had not yet used the appropriate legal mechanisms allowed in the law to contest her case (the Court of Appeal had not yet handed down its decision regarding the appeal of the defendant).

JSMP values the Court's firm stance and consistency in continuing to judge cases involving leaders, even though they continue to face pressure from politicians. Previously on 22 October 2014, Minister Xanana Gusmão, who at that time was the Prime Minister of the V Constitutional Government, wrote a letter addressed to the Chair of the National Parliament and prohibited

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<sup>14</sup> Article 69 of the Constitution

<sup>15</sup> Article 16 of the Constitution

<sup>16</sup> JSMP questions the open letter from Minister Ministru Xanana Gusmão, available at: [http://jsmp.tl/wp-content/uploads/2017/01/PR--Karta-Aberta-XG-ba-karta-Aberta-EP-Final2Fevereiro-2017-2\\_.pdf](http://jsmp.tl/wp-content/uploads/2017/01/PR--Karta-Aberta-XG-ba-karta-Aberta-EP-Final2Fevereiro-2017-2_.pdf) entitled: Letter of solidarity for the former Minister of Finance Emilia Pires which represents political interference in the judicial system - 02-02-17



members of parliament from removing the immunity of members of Government, even if they were suspected of being involved in crimes.

JSMP is concerned with this situation and highlighted in its 2014 OJS Report that these interventions have the potential to place serious pressure on proceedings involving the former Minister of Finance and other cases. However, in 2015 the court showed its integrity and independence and that it was not influenced by such interference and continued to process the case involving the former Minister of Finance, Emilia Pires, and concluded the process at the Dili District Court as the court of first instance in 2016. Unfortunately, while the appeal process in this case is still ongoing the defendant fled to Portugal to avoid justice.

#### **Recommendations**

5. Request for the Parliament and Government to stop interfering in the judicial sector, which is an independent organ of State.
6. Request for all people to use the applicable legal mechanisms if they do not agree with a decision of the court of first instance by lodging an appeal with the Court of Appeal.

#### **DEBATE ON THE APPOINTMENT OF THE PRESIDENT OF THE COURT OF APPEAL AND PROSECUTOR GENERAL**

On 28 April 2017 the President of the Republic of Timor-Leste, Taur Matan Ruak, exercised his competency pursuant to Article 86 (j) and (k) of the Timor-Leste Constitution<sup>17</sup> to appoint Deolindo dos Santos to the position of President of the Court of Appeal. The President appointed Deolindo dos Santos to replace Guilhermino da Silva who resigned from his position because of health issues. In addition to appointing the President of the Court of Appeal, at the same time the President of the Republic also extended the mandate of the Prosecutor General, Jose da Costa Ximenes (because his mandate was about to expire). The mandate of the President of the Court of Appeal and Prosecutor General is for 4 (four) years (2017-2021).<sup>18</sup>

There has been intense debate between the President of the Republic and the National Parliament about these two nominations. Members of parliament reacted with criticism towards the decision of the President of the Republic because they felt that these nominations did not

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<sup>17</sup> Article 86 of the Timor-Leste Constitution on the competence of the President of the Republic with regard to other organs (j) To appoint the President of the Supreme Court of Justice and swear in the President of the High Administrative, Tax and Audit Court (k) To appoint the Prosecutor-General for a term of four years

<sup>18</sup> Article 133 of the Timor-Leste Constitution of the President of the Republic (3) The Prosecutor-General shall be appointed by the President of the Republic for a term of office of four years, in accordance with the terms established by law (4) Article 124 of the Timor-Leste Constitution on the Supreme Court of Justice (3) The President of the Supreme Court of Justice shall be appointed by the President of the Republic, from among judges of the Supreme Court of Justice.

meet the legal requirements and formalities and therefore claimed these two appointments are not valid. Firstly, members of parliament stated that the mandate of President Taur Matan Ruak was about to expire (in less than 30 days), and therefore these two appointments could wait for the President-elect. Secondly, there was the issue of the National Parliament ratifying the appointment of the President of the Court of Appeal. Thirdly, some MPs were concerned with the attitude of the President of the Republic, and they believed that the President of the Republic committed an abuse of power whilst performing his duties.

On 8 May 2017 the National Parliament approved Resolution No. 33/III Rejecting the Ratification of the Appointment of Deolindo dos Santos as the President of the Court of Appeal and Draft Resolution No. 34/III on Request for the Immediate Resignation of the Prosecutor General, Jose da Costa Ximenes, because they claimed his appointment to this position did not fulfil the objective requirements. These two Draft Resolutions passed with 46 votes in favour, 6 against and 0 abstain. These resolutions were published in State Gazette No. 8/2017 – dated 17 May, and No. 9/2017 – dated 17 May.<sup>19</sup>

The National Parliament rejected the ratification of the appointment of Deolindo dos Santos to the position of President of the Court of Appeal based on the following considerations:

1. Politically and ethically this was not the right time because the appointment of the President of the Court of the Appeal was made right at the end of President Taur Matan Ruak's mandate.
2. The appointment of Deolindo dos Santos as the President of the Court of Appeal did not meet the legal requirements and formalities.

Meanwhile the Parliament requested for the Immediate Resignation of the Prosecutor General Jose da Costa Ximenes based on the following considerations:

1. Politically and ethically it was not the right time to extend the mandate of the Prosecutor General because this decision was made right at the end of President Taur Matan Ruak's mandate.
2. The recent appointment of Jose da Costa Ximenes did not fulfil the objective requirements of assuming the position of Prosecutor General.

The National Parliament believed that the appointment of the President of the Court of Appeal, who also exercises the function of President of the Supreme Court of Justice, needs to be ratified by the National Parliament. The National Parliament's claim is based on Article 95.3 (a) of the Constitution on the competence of the National Parliament, which states that it is incumbent on the National Parliament to: a) to ratify the appointment of the President of the Supreme Court of Justice and of the High Administrative, Tax and Audit Court. ☐

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<sup>19</sup> These two resolutions are available in the State Gazette:  
[http://www.mj.gov.tl/jornal/public/docs/2017/serie\\_1/SERIE\\_I\\_NO\\_19\\_A.pdf](http://www.mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_19_A.pdf)

In addition to the other legal provisions regarding the appointment of the President of the Supreme Court of Justice, Article 29.1 of the Judicial Magistrates Statute states that the President of the Supreme Court of Justice is appointed by the President for a mandate of 4 years, and this appointment must be ratified by the National Parliament.

The National Parliament focused on the competence of the Supreme Court of Justice. Therefore, the Parliament demanded for this appointment to be ratified by the National Parliament.

JSMP is concerned with these debates, because they give the impression to the public that the sovereign organs are unproductive and in disagreement. In particular, this debate has a negative effect on the regular functioning of the courts as sovereign organs that are independent, and the Public Prosecution Service as an institution that represents the State in penal actions. The courts and the Public Prosecution Service could feel uncomfortable performing their roles when subject to political pressure of this kind or when they are subjected to pressure by other sovereign organs. The other sovereign organs need to respect the independence of the judicial bodies and avoid interfering in the courts.

JSMP believes that this debate would not have occurred if the sovereign organs had good communication and removed political interests from the appointment process. JSMP believes that these appointments were the subject of debate because previously there was dissatisfaction between the President Taur Matan Ruak and the National Parliament. This problem started when the President made his State of the Nation speech on 20 September 2016 in the National Parliament and strongly criticised issues relating to national interests and deficiencies and mismanagement of the government led by the Prime Minister Xanana Gusmão.

This debate, and these resolutions from the National Parliament have encouraged JSMP to analyse and discuss the processes relating to appointment and practices that have been applied until now. The analysis was presented in a document entitled: "Norms on the Appointment of the President of the Court of Appeal and potential consequences that could obstruct ratification from the National Parliament".<sup>20</sup> This analysis and discussion is intended to provide clarification and advice to politicians to refrain from making decisions without thorough analysis and consideration of potential effects so as to not undermine the judicial and political stability of the nation.

According to JSMP analysis, pursuant to Law No.11/2004 on Amending the Judicial Magistrates Statute, amended by Law No. 8/2002 on the Judicial Magistrates Statute, the appointment of the President of the Court of Appeal does not need to be ratified by the National Parliament. This law does not contain any articles that require ratification by the National Parliament and does

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<sup>20</sup> Please refer to JSMP discussion on the debate regarding this appointment at: [http://jsmp.tl/wp-content/uploads/2012/06/Briefing-note-kona-ba-Nomeasaun-Prezidente-Tribunal-Rekursu\\_FINAL\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2012/06/Briefing-note-kona-ba-Nomeasaun-Prezidente-Tribunal-Rekursu_FINAL_TETUM.pdf)

not set out the position of the President of the Supreme Court of Justice, but rather sets out the delegation of competence of the Supreme Court of Justice.

The National Parliament was not consistent regarding its position on the ratification of the appointment of the President of the Court of Appeal. The previous President of the Court of Appeal, Claudio Ximenes, held this position for three consecutive mandates, but only received ratification for his last mandate. Meanwhile, the appointment of the President of the Court of Appeal, Guilhermino da Silva, was not ratified by the Parliament. And then there was debate regarding the appointment of Deolindo dos Santos.

Also, regarding the appointment of the Prosecutor General, Article 12 of Law No. 14/2005 on the Statute of the Public Prosecution Service states that the Prosecutor General will be appointed by the President of the Republic and can be reappointed one more time.

Therefore, based on JSMP analysis of the existing laws, these two appointments made by the President of the Republic to the position of President of the Court of Appeal and Prosecutor General are valid in accordance with the law and fall within the competence of the President of the Republic.

#### **Recommendations**

7. Request the National Parliament to amend Law No. 11/2004 on amending the Judicial Magistrates Statute to ensure consistency with the Constitution and to avoid confusion in the process of appointing the President of the Court of Appeal in the future.
8. JSMP recommends for politicians to avoid politicizing and using party politics in relation to judicial institutions and if possible avoid influencing or exerting political pressure. It is important to remove political influence to guarantee that judicial institutions can exercise their role independently and impartially in accordance with the Constitution and the Law.

## **1.3 RESOURCES IN THE JUSTICE SECTOR**

### **FUNDING**

In 2017 funds were approved for the Timor-Leste justice sector totalling US\$29,478,718 which is an 8.33 % increase from 2016. From these funds the Ministry of Justice received US\$20,997,718 (increase of 3.64%), the courts received US\$4,353.00 (increase of 11.6%), and the Office of the Prosecutor General received US\$4,128,000 (increase of 28.7%). Even though the allocation of funds to the courts increased, the increase only affected the Court of Appeal (14.1 %). Meanwhile funds for the district courts decreased (-0.14%) and funds for the Superior Council of Judicial Magistrates did not change (0%). Funds for other institutions in the justice sector are set out in the table below.

**Table 2: Funding for the Justice Sector in 2016 and 2017**

	<b>2016 Budget</b>	<b>2017 Budget</b>	<b>%</b>
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			Increase
Ministry of Justice, including:	US\$ 20,233,000.00	US\$ 20,997,718.00	3.64 %
Office of the Public Defender	US\$ 1,363,000.00	US\$ 1,838,000.00	25.84 %
Legal and Judicial Training Centre	US\$ 194,000.00	US\$ 225,000.00	13.8 %
Other	US\$ 18,677,000.00	US\$ 18,934,000.00	1.36 %
The courts, including :	US\$ 3,848,000.00	US\$ 4,353,000.00	11.6 %
- Court of Appeal	US\$ 3,086,000.00	US\$ 3,592,000.00	14.1 %
- District Courts	US\$ 724,000.00	US\$ 723,000.00	-0.14 %
- Superior Council of Judicial Magistrates	US\$ 38,000.00	US\$ 38,000.00	0 %
Public Prosecutor Service	US\$ 2,942,000.00	US\$ 4,128,000.00	28.7 %
<b>TOTAL BUDGET FOR THE JUSTICE SECTOR</b>	<b>US\$ 27,023,000.00</b>	<b>US\$ 29,478,718.00</b>	<b>8.33 %</b>

JSMP is happy that in 2017 the Government and National Parliament increased funding for the Office of the Public Defender and Office of the Prosecutor General as recommended by JSMP in its 2016 OJS Report. JSMP believes that these two institutions play an important role in guaranteeing the fundamental rights of citizens regarding access to justice.

As noted above, funding for the Court of Appeal increased in 2017, but only by a small amount and therefore did not cover all of the requirements of the Court of Appeal as set out in its plan. According to a source from the Court of Appeal, in 2017 the courts only received funding for wages and goods and services (operational support services). Meanwhile the plan of the Court of Appeal relating to minor capital was not approved, therefore some of the plans for 2017 could not be executed. For example cars could not be purchased for new judges and long serving judges continued to use old cars from 2006 and 2008. In addition, the court could not carry out its plan to construct a new room for victims at the court.

In 2017 training for court actors did not really take place because the new leadership at the Court of Appeal paid more attention to identifying the types of training needed by court actors. In addition, the Court also did not have funding to participate in important events overseas.

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## COURT ACTORS

In 2017 the total number of judicial actors, including staff supporting judicial bodies, was 402. This number was higher than the total for 2016, which was 239, because last year JSMP did not include the staff working in the Public Prosecution Service and Office of the Public Defender.

JSMP observed that in 2017 there were 30 court clerk officers who completed their training, in line with JSMP's recommendation to increase the number court clerk officers in each court. Therefore next year another 30 court clerk officers will provide further assistance to the 56 judicial court clerk officers who are already working. JSMP hopes that the increase in the number of new judicial court clerk officers will respond to the challenges faced by the courts, in particular the Dili District Court that has a backlog of cases but a shortage of judicial court clerk officers.

With this increase in the number of judicial court clerk officers JSMP hopes that the courts will be able to function more efficiently. The table below shows the number of judicial magistrates, public defenders, judicial officers, translators and administrative staff.

**Table 3: Number of Judicial Actors in 2017**

	Judicial Magistrates		Agents of the Office of the Public Defender	Total
	Judges/Courts	Public Prosecution Service		
Total Judges/Prosecutors/Public Defenders	34	30	30	<b>94</b>
Judicial Officers	56	78	32 <sup>21</sup>	<b>166</b>
Translators	13	3	1	<b>17</b>
Administrative Staff	73	34	20	<b>127</b>
<b>Total</b>	<b>176</b>	<b>145</b>	<b>83</b>	<b>404</b>

As shown in the table above, in 2017 the total number of judges, prosecutors and public defenders did not change from 2016. This was because the Legal and Judicial Training Centre only reopened in May 2017. Therefore, there may be an increase in new judicial actors in the next two years. JSMP hopes that in the next two years the number of judicial actors can be increased. It is important for the Legal and Judicial Training Centre to produce judicial actors and new agents in the Office of the Public Defender who are high quality and well qualified to carry out their work.

In relation to translators, JSMP believes that there needs to be a further increase in translators working at the Public Prosecution Service and Office of the Public Defender and they need to be given special training on legal terminology. Also, as outlined in this JSMP's report in the section on languages it is necessary to recruit translators who speak regional languages, especially within the jurisdiction of the Baucau District Court.

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<sup>21</sup>The 32 Judicial Officers were assisted by 2 volunteers.



### Recommendations

9. The Legal and Judicial Training Centre needs to continue to function to increase the number of judicial actors and needs to prioritise the quality of training.
10. Provide training to increase the knowledge and understanding of translators regarding legal terminology for translators who speak the official languages and those who speak regional languages.

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## TRAINING FOR COURT ACTORS

Coaching and training is very important for court actors. Coaching and training can increase their knowledge regarding the legal sphere. As stated by the President of the Court of Appeal, Deolindo dos Santos, judges need to continuously learn because the laws are always changing.<sup>22</sup>

In 2017 all court actors (judges, prosecutor and public defenders) participated in training related to transnational crimes such as money laundering and drugs that are starting to emerge in Timor-Leste. In addition, they participated in other training provided by these institutions based on their respective roles and needs domestically and overseas. The trainers were experienced international judicial actors. For example, in July 2017 the Asia Foundation, through its Nabilan Program, collaborated with the Court of Appeal to organize 4 days of complementary training for judges.<sup>23</sup> 15 judges participated in this training. This training covered materials on the Civil Code and Civil Procedure, family law, the rights of the child, contracts and the package of new land laws.

This training was facilitated by Judge Phillip Rapoza (former Chief Justice of the Massachusetts Court of Appeal, USA and former Judge of the Special Panel for Serious Crimes in Timor-Leste between 2003-2005 who retired as a serving judge in 2015) and two Portuguese judges.<sup>24</sup> In addition, in 2017, joint training was attended by judges, prosecutors, public defenders and judicial officers. This was organized by the Legal and Judicial Training Centre with international speakers and the participants learned about real estate, land and property rights, the judicial regime on the use and trafficking of drugs.

In an interview between JSMP and a judge from the Dili District Court<sup>25</sup> the judge said that in 2017 judges continue to receive complementary judicial training and training both domestically and internationally that was given by experts in the legal field (including training organised by the TAF). In addition to training on transnational crimes, the judges also received training on professional deontology, domestic violence, corruption, leadership, civil law (family law, rights of the child, contracts and package of new land laws, arbitration) etc.

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<sup>22</sup>Diário Nacional Newspaper, 3 August 2017, entitled "USA Embassy conducts training for East Timorese judges.

<sup>23</sup> Interview with a senior judge who said that she was happy with the training organised by the TAF because it was based on the laws of Timor-Leste.

<sup>24</sup> Judge Philip Rapoza continues to be active in the field of international justice and now is the President of the International Penal and Penitentiary Foundation.

<sup>25</sup> Interview on 31 January 2018, at the Dili District Court.

In addition to participating in training on transnational crimes in 2017, public defenders also participated in training in the field of civil law. Also, the Office of the Public Defender organised a seminar on the role of the Office of the Public Defender, in particular, how they attend to the public based on the Statute of the Office of the Public Defender, pursuant to Decree-Law No.38/2008 as amended by Decree-Law No. 10/2017. However, in 2017 the Office of the Public Defender did not participate in much training because the training budget for the Office of the Public Defender was reduced as the consequence of political debate.<sup>26</sup>

JSMP is happy with the policy of the courts to continue organising, and ensuring participating in trainings, both domestically and overseas. This is one way to increase the knowledge and capacity of court actors in all areas, especially regarding organized crime. This is a step towards strengthening the capacity of the court actors to prosecute, defend, provide legal assistance and make decisions in cases, both for ordinary crimes and transnational crimes that are naturally complex. JSMP recommends for ongoing training to be provided to build the capacity of court actors.

However, JSMP believes that more training should focus on criminal trends and crimes that are prevalent in society. This includes crimes such as domestic violence, rape, sexual abuse of minors, neglect, parental responsibility and other crimes involving minors because JSMP has observed that often decisions in these cases are inconsistent and do not adhere to the existing laws. For example, as discussed below, the courts have displayed a major preference for applying fines in cases of domestic violence but they do not assess the requirements of Article 38.1 of the Law Against Domestic Violence.

#### **Recommendation**

11. Continue training for court actors, judges, prosecutors and public defenders to ensure the quality of prosecution, defence and decision-making.

## **1.4 MOBILE COURTS**

The courts continue to conduct Mobile Courts in each jurisdiction. JSMP values this initiative because it continues to promote access to justice so that communities who live a long way from the courts can have easy access to trials.

In 2017 JSMP monitored 147 cases conducted by the Mobile Courts in the jurisdiction of the Baucau, Dili and Suai District Courts. The Baucau District Court regularly conducted a Mobile Court twice a month, in the first and last weeks of the month.

**Table 4: Total cases conducted by the Mobile Courts that JSMP monitored during a 4 year period**

Court	2014	2015	2016	2017
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<sup>26</sup> Interview with the Coordinator of the Office of the Public Defender, on 21 January 2018.

Baukau	63	104	52	96
Dili	12	23	11	6
Oekusi	0	0	0	0
Suai	88	111	82	45
<b>Total</b>	<b>163</b>	<b>238</b>	<b>145</b>	<b>147</b>

During 2017 the courts scheduled sufficient hearings before the mobile courts as suggested by JSMP. By hearing a sufficient number of cases, the quality of the process, from the examination of until final decision, was guaranteed.

Meanwhile, JSMP is still concerned about the spaces used by mobile courts to hold trials. In 2017 JSMP the mobile courts continued to hold trials in certain locations such as PNTL stations and municipal offices. JSMP has questioned if these locations are suitable. Also, during 2017 JSMP observed that the office of the Public Prosecution Service is no longer being used by the mobile court to conduct trials. This is a positive step because a location unsuitable for holding a trial is no longer being used.

#### **Recommendation**

12. The State needs to establish a court in each municipality, especially in those districts that have been using the mobile courts, to ensure there is a safe environment to hear sensitive cases.

## **1.5 COURT OF APPEAL**

Currently the Court of Appeal is the highest court in Timor-Leste, even though it sometimes exercises the competence of the Supreme Court of Justice as provided for in Article 124 and Article 126 of the Constitution. Also, the Court of Appeal and the Supreme Court of Justice are the same institution, although technically they perform their own respective functions. This has created a lot of confusion in practice, including the appointment to positions of leadership at the Court of Appeal, as discussed above in the section on the debate regarding the appointment of the President of the Court of Appeal.

### **PRODUCTIVITY OF THE COURT OF APPEAL**

In practice the Court of Appeal functions normally as the superior court to deal with appeals lodged with the Court of Appeal. In 2017 the Court of Appeal registered 191 new criminal cases and 25 new civil cases. Meanwhile, there were 101 criminal cases pending from 2016 and 50 civil cases. From this total of 292 criminal cases (pending appeals and new appeals), the Court of Appeal managed to finalise 176 cases and also 37 civil cases from a total of 75 cases (pending and new). Therefore, in 2017 the Court of Appeal managed to decide 213 cases.

### **ISSUE OF ACCESSIBILITY**

Like previous years, throughout 2017 the Court of Appeal did not hold trials and examine cases through deliberation as provided for in Article 306 of the Criminal Procedure Code.<sup>27</sup> After the judges deliberated they notified the parties through the Prosecution and Defence as applicant and respondent in each case.

JSMP observed that most trials or re-examination of evidence before the Court of Appeal was done differently to the Court of First Instance, and almost always via written notification only. Trials before the Court of Appeal were almost always closed to the public, or completely closed, without access to the public or the parties (applicant and respondent) as parties involved in this process.

JSMP believes that to ensure that all people understand the process and the respective interests in each case, and at the very least the announcement of the decision, the Court of Appeal needs to ensure that hearings to announce a decision are open to the public, especially for the interested parties, so they can receive clear and credible information relating to the decision and considerations of the court in each case.

There are several reasons why JSMP feels that is important for hearings and the announcement of decisions to be open to the public.

Firstly, to comply with obligations set out in the law. International law and national law recognises the right to an open trial. Article 14.1 of the International Convention on Civil and Political Rights clearly states that trials need to be open to the public, and only in limited circumstances can trials be closed to the public.<sup>28</sup> Article 131 of the Timor-Leste Constitution also similarly states that court hearings shall be public. Article 131 does not list the reasons/motives for closing a trial to the public, but highlights that trials can only be closed to the public when necessary to "safeguard personal dignity or public morality and national security, or guarantee its own smooth operation".

Secondly, to ensure that applicants and respondents understand the reasons and grounds why they have lost a case and why the other party (opposing party) has won the case. Normally a person will feel satisfied and will accept the results if he/she is involved and understands the formalities of the process. The court needs to have the capacity and responsibility to ensure that

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<sup>27</sup>Article 306 of the Criminal Procedure Code on deliberation and decision

<sup>28</sup> The circumstances that allow for a trial to be closed to the public:

- 1) for moral reasons;
- 2) public order;
- 3) national security;
- 4) when the interest of the private lives of the parties so requires;
- 5) publicity would prejudice the interests of justice;
- 6) the interest of juvenile persons otherwise requires; or
- 7) matrimonial disputes or the guardianship of children

ICCPR (1966) entered into force on 23 March 1976, art. 14(1); 14(4) and Timor-Leste ratified this Convention in 2003.

decisions produced by judges have value and are binding because these decisions need to have credibility so that people have faith in and accept these decisions.

Thirdly, it is necessary to promote transparency and accountability in judicial decisions. Decisions that are open and accessible to the public will guarantee monitoring and allow for public assessment/examination to promote transparency and accountability amongst the public and the media. Decisions that promote transparency will encourage people to have faith in decisions in particular cases and the judicial system in general. It is important that the public and in particular those involved in a trial understand how the judicial actors determine the results, because this will help reduce accusations of discrimination, bias, abuse of power and corruption in the judicial sector.

Fourthly, decisions in all cases use Portuguese which automatically makes it difficult for applicants or respondents and the general public to understand these decisions. JSMP believes that even though the prosecution and defence play a role in explaining the decision and the considerations to the applicant and respondent JSMP doubts that the prosecution and defence can do this properly when the applicant and respondent are not present when the Court of Appeal hands down its decision. Also, due to the issue of limited time, often prosecutors and public defender cannot properly explain these decisions to applicants and respondents.

#### **Recommendation**

13. Request for the Court of Appeal to conduct a hearing when announcing its decision but it would be better to re-examine evidence through a hearing so the parties can properly understand their case.
14. JSMP recommends that in the future the Court of Appeal should hear the parties when re-examining evidence so that the parties can properly understand proceedings in their case, and find out and receive proper information on the grounds why they lost or won the case.

## **1.6 LANGUAGE**

Language continues to be a difficult issue in relation to the right to access justice. Even though it doesn't happen in all cases, every year JSMP notes similar problems relating to the use of language in the courts. In 2017 the issue of language continued to be obstacle in the justice sector. Based on the Timor-Leste Constitution<sup>29</sup> the official languages of Timor-Leste are Tetum and Portuguese and court procedures must use these two official languages. Based on the observations of JSMP, translators continue to face difficulties when interpreting Tetum to Portuguese and other international languages.

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<sup>29</sup> Article 13 on official languages and national languages (1) Tetum and Portuguese shall be the official languages in the Democratic Republic of Timor-Leste.

As observed by JSMP in the case of Tammy-Guerra, the translator had serious difficulty in properly interpreting during the trial process especially judicial terminology in Tetum, Portuguese and English, so therefore it was very difficult for court actors as well as the parties involved in the case to properly understand all of the proceedings.

In addition to knowledge of legal terms, JSMP observed other factors that have had an impact on interpreting, such as only one interpreter being available to translate three languages at the same time in a complex or big case such as the one involving Tammy-Guerra.

In addition to this difficulty the courts also encountered obstacles with local languages. In 2017 JSMP observed that the police authorities and judicial officers acted as interpreters during the entire trial process. For example, in the jurisdiction of the Baucau District Court, as shown in the table below:

**Table 5: Non-official translators in cases processed by the mobile courts**

Day	Translator	Language	Case Type	District of the Mobile Court
1 February 2017	Investigative Police	Tetum-Galolen	Simple offences against physical integrity - DV	Manatuto
5 April 2017	Police	Tetum-Tetum Terik	Simple offences against physical integrity	Viqueque
5 June 2017	Investigative police	Tetum-Fataluku	Sexual coercion	Lautem
6 June 2017	Investigative police	Tetum-Fataluku	Aggravated fraud	
7 June 2017	Investigative police	Tetum-Makasae	Aggravated property damage	
7 June 2017	Investigative police	Tetum-Fataluku	Simple offences against physical integrity	
5 July 2017	Judicial Officers	Tetum-Makasae	Simple offences against physical integrity	Viqueque
6 July 2017	Judicial Officers	Tetum-Naoeti	Simple offences against physical integrity	
8 October 2017	Investigative police	Tetum-Galolen	Simple offences against physical integrity - DV	Manatuto

JSMP is grateful that the courts have the means to obtain interpreters for local languages because until now the courts have not had official interpreters or independent interpreters for local languages. However JSMP believes that the use of unofficial interpreters from the police and judicial officers can lead to a conflict of interest. In particular because the role of the police and judicial officer is totally different to the role of interpreter. The main role of the police is to guarantee security and provide protection during the trial process and the role of the judicial officer is to write the minutes of the trial, but not to act as an interpreter in a case because it



could impact on the credibility and quality of the proceeding. Also, ordinary citizens can believe that police are impartial because they investigate a case and then act as an interpreter.

JSMP continues to request for the courts to treat this as an important issue and to recruit more interpreters in local languages because the volume of cases involving local languages is also increasing in the courts.

#### Recommendations

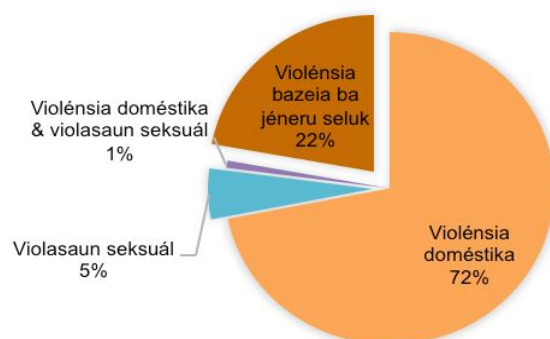
15. Request for the court to increase the knowledge of interpreters regarding juridical terms, in Tetum, Portuguese and other languages.
16. The courts need to recruit more official interpreters for the official languages of Timor-Leste and other international languages and local languages

## 2. GENDER EQUALITY

### 2.1 CASES OF GENDER BASED VIOLENCE

In 2017 JSMP monitored and analysed 537 cases involving gender based violence against women and girls. These cases made up 65 percent of a total number of 829 criminal cases monitored by JSMP in 2017. This shows that there are still many cases involving gender based violence at the courts. The graph below shows that 72 percent (72%) of cases involving gender based violence were categorised as domestic violence, whilst 5 percent (5%) involved sexual violence. This percentage is similar to statistics of cases monitored by JSMP in 2016 where the figure was 62 percent (62%) of 941 criminal cases, and 65 percent (65%) were cases of domestic violence and approximately 9 percent (9%) were cases of sexual violence.

**Graph 3: Main types of gender based violence against women and girls monitored by JSMP in 2017**



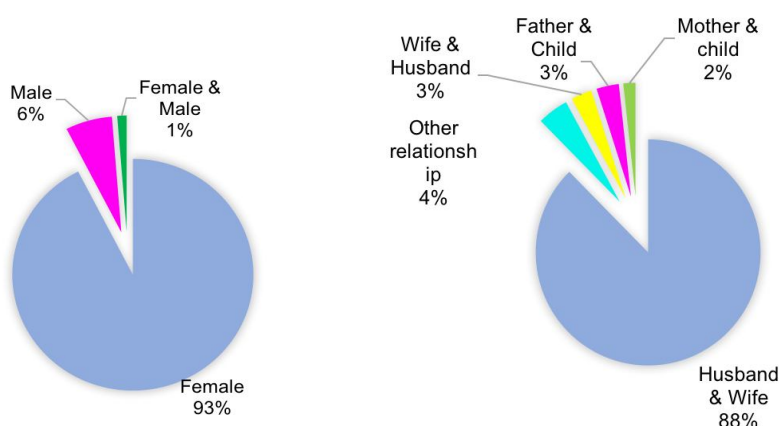
## 2.2 CASES OF DOMESTIC VIOLENCE

### STATISTICS ON CASES OF DOMESTIC VIOLENCE

In 2017 JSMP monitored 404 cases of domestic violence (DV). Normally in cases involving domestic violence the prosecution also applied Article 35 of the Law against domestic violence. Similar to what was observed in 2016, JSMP observed that during 2017, some cases of domestic violence were not processed by the courts in accordance with the Penal Code, especially in cases involving minors. The prosecutors did not properly analyse the circumstances of crimes and did not charge crimes based on the seriousness of the acts committed by defendants.

JSMP observed that cases of domestic violence involved both male and female defendants. However, JSMP monitoring continued to show that most cases involved male defendants in comparison with female defendants. The graph below proves that most cases monitored by JSMP during 2017, or 93 percent (93%) of cases, involved female victims and only 3 percent (3%) involved male victims. The graph below also shows that in 88 percent (88%) of cases categorised as domestic violence, the defendant and victim were husband and wife.

**Graph 4: Cases characterized as domestic violence showing the sex of the victim and the relationship between the defendant and the victim**



**Table 6: Cases characterized as domestic violence monitor by JSMP during 2017**

Case type	Article(s)	Number of cases
Simple offences against physical integrity characterised as domestic violence	Article 145 PC & 35 LADV	345
Mistreatment of a spouse	Article 154 PC & 35 LADV	39
Simple offences against physical integrity characterised as domestic violence & threats	Article 145 PC & 35 LADV & 157 PC	6
Mistreatment of a minor	Article 155 PC & 35 LADV	4

Aggravated rape - Incest characterised as domestic violence	Article 172, 173 PC & 35 LADV	2
Aggravated homicide characterised as domestic violence	Article 139 PC & 35 LADV	2
Homicide & Aggravated homicide characterised as domestic violence	Article 138 & 139 PC & 35 LADV	1
Attempted aggravated homicide characterised as domestic violence	Article 23 & 139 PC & 35 LADV	1
Aggravated sexual abuse of a minor with penetration – Incest characterised as domestic violence	Article 177 (1) & 182, 173 PC & 35 LADV	1
Aggravated sexual abuse of a minor with penetration – Incest characterised as domestic violence	Article 177 (1) & 182 PC & 35 LADV	1
Simple offences against physical integrity, Attempted homicide characterised as domestic violence	Article 145 & 23, 138 PC & 35 LADV	1
Simple offences against physical integrity & Serious offences against physical integrity characterised as domestic violence	Article 145, 146 PC & 35 LADV	1
<b>Total domestic violence cases</b>		<b>404</b>

In 2017 JSMP observed that from 345 cases involving simple offence against physical integrity categorised as domestic violence, in 65 percent (65%) of cases the husband committed the offence against his wife. In some of these cases the prosecutor charged the offender with simple offences against physical integrity or the charge did not reflect the seriousness of the case, even though there was strong evidence that the defendant had the intention to cause serious physical harm or cause potential harm to the life of the victim. JSMP believes that for crimes characterized as domestic violence the offender should be charged with mistreatment of a spouse (Article 154 PC) and not simple offences against physical integrity (Article 145 PC). Article 154 of the Penal Code is for more specific crimes and better reflects the seriousness of violence committed by a defendant against his wife.

### Case study<sup>30</sup>

The prosecutor alleged that on 16 November 2012 at 8am the defendant and his wife argued. The defendant swore at her, punched the victim 4 times in the head and slapped her twice on the cheek. The defendant also pulled the victim by the hair into the bedroom and this caused the victim to fall to the ground. When the victim went to stand up the defendant punched the victim once under her left arm and the victim fell to the ground. After falling down, the defendant took a crowbar and stabbed at the victim, however the victim dodged it and it struck the victim on her right arm and caused an injury and heavy bleeding.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3(a) and 35(b) of the Law Against Domestic Violence.

During the trial the defendant confessed to the criminal acts he committed against the victim and the victim maintained the facts set out in the indictment.

The prosecutor alleged that the defendant committed the crime against his wife and requested for the Court to admonish the defendant as a means of deterrence against the defendant so in the future he would not repeat such acts against the victim.

The court found the defendant guilty of committing the crime in accordance with the facts in the indictment of the Prosecutor and issued the defendant with an admonishment.

JSMP is very concerned with the prosecutor's reasoning in this case. As evident in the aforementioned case study, the prosecutor did not properly analyse or discuss the facts and the impact of the defendant's actions. The facts of this case show that in addition to swearing at the victim, the defendant punched the victim, threw her on the ground, pulled her hair and used a sharp weapon (crowbar), which posed the risk of serious injury. The prosecutor could have understood that the crowbar used by the defendant to stab at the victim could have posed a risk and threatened the life of the victim or caused serious injury to the victim. These acts not only placed serious pressure on the victim, but they also constituted serious offences against the health of the victim (physical and psychological). The facts show that the defendant intended to cause serious harm to the victim. Actually the prosecutor should have charged the defendant with Article 154 of the Penal Code on mistreatment of a spouse or could have charged him with attempted homicide pursuant to Article 23 and Article 138 of the Penal Code.

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<sup>30</sup>Case No. 1203/12.PDDIL. JSMP analysis on this issue is available in a Press Release entitled: The Public Prosecution Service and the courts need to carefully and thoroughly consider the relevant facts in cases of domestic violence when formulating charges and sentences, available at: [http://jsmp.tl/wp-content/uploads/2017/01/PrKazuVDPenaADMOESTASAUN\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2017/01/PrKazuVDPenaADMOESTASAUN_TETUM.pdf)

In addition to the charges, JSMP believes that the prosecutor also recommended the wrong sentence, because he asked the Court for an admonishment and the court agreed with this recommendation. The penalty of an admonishment is a piece of advice, and there is no guarantee that the defendant will follow it. JSMP believes that this decision was not correct and appropriate for ensuring that the defendant will improve his behaviour in the future, and this decision shows that the Public Prosecution Service and the courts do not consider crimes of violence against women as serious crimes.

#### **Recommendations**

17. JSMP requests for the prosecution and the courts to consider the relevant facts and circumstances in such crimes and the potential consequences that could affect the female victim.
18. JSMP again requests for the Public Prosecution Service to develop legal guidelines to explain the key elements of Articles 145, 146 and 154 of the Penal Code, and provide examples of cases that use the correct article to charge defendants, and to provide guidance on sentences that should be recommended by the prosecution.

In addition to shortcomings in the preparation of charges and final recommendations in cases monitored by JSMP, the courts did actively review new facts produced during the examination of evidence, as seen in the case study below.

#### **Case study<sup>31</sup>**

On 10 October 2017 the Oecusse District Court acquitted a female defendant from the charges of the public prosecutor for allegedly committing the crime of simple offences against physical integrity characterized as domestic violence against her husband. The court acquitted the female defendant after finding that her actions were legitimate self-defence.

The acquittal was based on the statement of the defendant, which was confirmed by the victim, that when the incident occurred the victim had grabbed and choked the defendant when the defendant was asleep. Therefore, the defendant bit the victim on the left side of his stomach in self-defence, but the victim did not release the defendant. The defendant tried to defend herself and was reaching around for a piece of wood but she could not find one and instead she found a machete. The defendant tried to slash the victim's earlobe with the machete so that he would let go of her hand and finally the victim let go of her throat.

The prosecution and defence both considered this act as legitimate self-defence.

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<sup>31</sup> JSMP analysis on this case is available in a Press Release at: <http://jsmp.tl/wp-content/uploads/2017/01/JSMP-husu-Prokurador-tenki-pro-ativu-atu-avalia-faktu-foun-sira-sira-neebe-produs-durante-produsaun-ba-prova-no-asegura-protesaun-ba-interesadu-si.pdf>

In the aforementioned case study JSMP found that the prosecutor failed to establish the facts to show that the defendant was in fact the victim in this case. Actually the prosecutor should have analysed how the victim's actions could endanger the life of the defendant.

The actions of the victim in choking the defendant could have endangered the defendant's life. If the defendant did not take action to defend herself then the defendant could have lost her life. JSMP believes that the prosecution and the court should have considered investigating the crime committed by the victim against the defendant. The victim could have been charged with attempted homicide because the victim choked the defendant and held the defendant down on the bed.

However, JSMP congratulates the court for considering legitimate self-defence in its decision. Based on JSMP's observations, there have been some cases involving female defendants where legitimate self-defence has been considered by the courts when making a decision.

JSMP hopes that in future cases all of the courts consider legitimate self-defence as an important factor in their decision-making.

#### **Recommendations**

19. The prosecutor needs to be proactive in assessing the facts produced during the trial and must ensure that perpetrators of crime are investigated and held responsible for the crime they have committed.
20. In future cases all of the courts can consider legitimate self-defence as an important factor in their decision-making.

### **TRENDS IN SENTENCING IN CASES CHARACTERIZED AS DOMESTIC VIOLENCE**

Judges prefer to apply suspended prison sentences in cases of domestic violence. This trend continued in 2017, with 70 percent (70%) (280 cases), which was the most common penalty. Fines were imposed in 10 percent (10%) (41 cases), and in 5 percent (5%) of cases (21 cases) prison sentences were imposed, but the execution was suspended with rules of conduct based on Article 70 of the Penal Code.

**Table 7: Decisions in cases characterized as domestic violence monitored by JSMP in 2017**

<b>Type of decision</b>	<b>Number</b>	<b>%</b>
Suspended sentence (Article 68 PC)	280	70%
Fine (Article 67 PC)	41	10%
Suspended sentence (Article 68 PC) with rules of conduct (Article 70.1(g) PC)	21	5%
Unknown	20	5%
Admonishment (Article 82 PC)	16	4%

Prison sentence (Article 66 PC)	14	4%
Acquittal	7	2%
Suspended sentence (Article 68 PC) & Civil compensation	2	0.5%
Suspended sentence (Article 68 PC) & Acquittal	1	0.25%
Fine (Article 67 PC), Suspended sentence (Article 68 PC)	1	0.25%
Suspended sentence (Article 68 PC) & Settlement approved	1	0.25%
<b>Total</b>	<b>404</b>	<b>100%</b>

The application of suspended prison sentences without monitoring by competent entities during the period of suspension can make other people, as well as the convicted person, think that there are no consequences for a person who commits this crime. The application of suspended penalties has no deterrent effect to teach the defendant not to repeat his actions and does not teach other people to avoid crime.

JSMP is pleased that from 2015 to 2017, the Dili and Baucau District Courts applied rules of conduct (obligation to periodically report to the court) in many cases of DV where the courts applied suspended penalties. However, not all judges and all courts apply this obligation, therefore JSMP suggests that all judges (especially in the Suai and Oecusse District Courts) should start applying rules of conduct. In addition, JSMP suggests that the competent entities should effectively monitor the application of these rules. This is to guarantee the aim of the sentence to reduce crime in society and to educate other people not to commit crimes in society, especially the crime of domestic violence.

JSMP is concerned with the effectiveness of rules of conduct. The JSMP Thematic Report on 'Sentencing and Domestic Violence: Suspended prison sentences with conditions'<sup>32</sup>, launched on 22 December 2017, outlined the importance of obligations, including rules of conduct, but they have limited capacity to deter other people in the general community. JSMP believes that the local authorities need to be involved in the suspension process so the general community will know about the penalty that is imposed for this type of crime. For convicted persons in cases of domestic violence who are serving a suspended penalty, the village chief can provide monitoring, because this is part of the competencies of the village chief as set out in the Law on Community Leaders, and this can also help deter others in the community from committing crime.

In addition, JSMP is also concerned about the fines imposed by the courts in cases of domestic violence.<sup>33</sup> The courts often impose fines in cases of domestic violence without considering the

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<sup>32</sup> JSMP thematic report entitled: 'Sentencing and Domestic Violence: Suspended prison sentences with conditions'. This report is available at: <http://jsmp.tl/wp-content/uploads/2012/05/17.12.17-FINAL-Report-on-suspended-sentences-with-conditions-TETUM.pdf>

<sup>33</sup> JSMP Press Release published on 30 November 2017 entitled: 'The application of fines in cases involving domestic violence should consider the requirements of Article 38 of the Law Against Domestic Violence'. Available at: [http://jsmp.tl/wp-content/uploads/2017/01/hadia-PR\\_Presiza-hare-rekizitus-LKVD-antes-aplika-pena-multa-ba-kazu-VD-final.pdf](http://jsmp.tl/wp-content/uploads/2017/01/hadia-PR_Presiza-hare-rekizitus-LKVD-antes-aplika-pena-multa-ba-kazu-VD-final.pdf)

requirements of Article 38 of the LADV.<sup>34</sup> Article 38.1 states that a fine can be imposed to guarantee the security of the victim, the perpetrator agrees to undergo treatment, or follow-up support services, that would benefit the preservation of the family unit. JSMP doubts if the judges make a decision to impose a fine with reference to, and reflection on, Article 38 of the Law Against Domestic Violence because JSMP has not noted the judges' consideration of these requirements. JSMP also believes that the application of fines can cause financial difficulties for victims and children if they continue to live with the convicted person. JSMP outlined this concern in its report entitled: 'The application of alternative sentences in cases of domestic violence at the Oecusse District Court -2015'.<sup>35</sup>

#### **Recommendations**

21. The Ministry of Justice or the courts need to develop guidelines on sentencing in cases of domestic violence relating to the application of rules of conduct with suspended prison sentences.
22. The courts should apply rules of conduct in more cases and order convicted persons to report to local authorities such as the village chief. The Ministry of Justice should develop a mechanism to facilitate this process, including the provision of training to local authorities to implement this process through monitoring and effective reporting to the courts.
23. If the court considers that a fine is the best option, the court needs to comply with the conditions set out in Article 38 of the Law Against Domestic Violence.

## **2.3 CASES OF SEXUAL VIOLENCE**

Sexual violence continues to occur and is a massive problem for women and children (who form the majority of victims) in Timor-Leste. The consequences are extremely severe in cases of rape involving minors, as these cases have a very serious impact on the victim's social and

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<sup>34</sup> Article 38 of the LADV on Choice and Determination of the Sentence, (1) The court may substitute the penalty of imprisonment with a penalty of a fine provided the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to undergo treatment, or follow-up support services for the victim and such a measure would benefit the preservation of the family unit.

<sup>35</sup> Thematic report, available at: [http://jsmp.tl/wp-content/uploads/2012/05/FINAL\\_JSMP\\_Sentensa-alternativa\\_TDO\\_Nov-20151.pdf](http://jsmp.tl/wp-content/uploads/2012/05/FINAL_JSMP_Sentensa-alternativa_TDO_Nov-20151.pdf)



psychological development and potentially the victim can suffer from depression and trauma throughout their entire life.

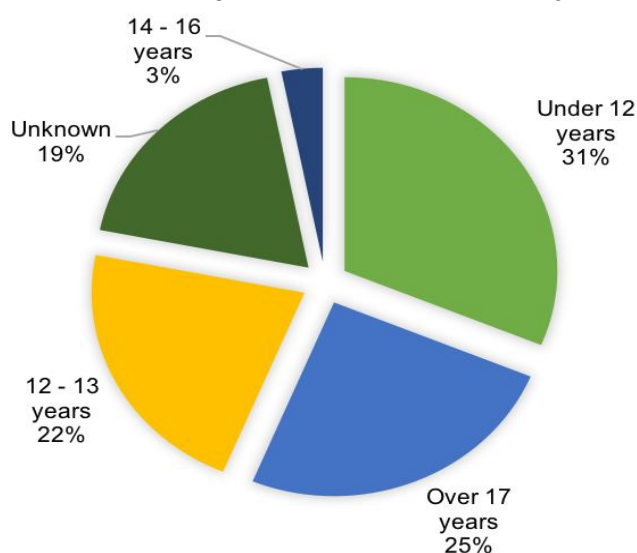
JSMP monitoring has observed that the courts have continued to put perpetrators who have been found guilty of committing crimes characterized as sexual violence in prison. This is an important step forward. However, there are still many cases that are not dealt with properly. In 2017, JSMP observed errors in charging of sexual violence crimes, and sentencing is inconsistent as some sentences include civil compensation and some do not.

## STATISTICS ON CASES OF SEXUAL VIOLENCE

In 2017, JSMP monitored 32 cases of sexual violence, which formed 6 percent (6%) of 537 cases involving violence against women and children, and 4 percent (4%) of a total of 829 criminal cases monitored by JSMP in 2017.

The graph below shows that the largest number of victims were aged less than 12, at 31 percent (31%) (10 cases), in comparison with other age groups. 25 percent (25%) involved victims aged 17 and above (8 cases), 22 percent (22%) involved victims aged 12-13 (7 cases), 19 percent (19%) (6 cases) involved victims whose age was unknown and 3 percent (3%) involved victims aged 14-16 (1 case).

**Graph 5: Cases involving sexual violence monitored by JSMP in 2017 based on age**



**Table 8: Cases involving sexual violence monitored by JSMP in 2017**

Case type	Article(s)	Number of cases
Sexual abuse of a minor with penetration	Article 177 (1) PC	7
Rape	Article 172 PC	5
Aggravated rape	Article 172 & 173 PC	4
Aggravated sexual abuse of a minor with other sexual act	Article 177 (2) & 182 PC	4
Aggravated sexual abuse of a minor with penetration	Article 177 (1) & 182 PC	2
Aggravated rape – Incest characterised as domestic violence	Article 172 & 173 PC & 35 LADV	2
Attempted, punishability of attempted & sexual abuse of a minor with other sexual act	Article 23, 24 & 177 (2) PC	1
Sexual acts with an adolescent	Article 178 PC	1
Aggravated sexual abuse of a minor with penetration – Incest characterised as domestic violence	Article 177 (1) & 182, 173 PC & 35 LADV	1
Attempted, punishability of attempted & Sexual coercion	Article 23, 24 & 171 PC	1
Sexual exploitation of a third party	Article 174 PC	1
Sexual abuse of a minor with other sexual act	Article 177 (2) PC	1
Sexual coercion	Article 171 PC	1
Aggravated sexual abuse of a minor with penetration – Incest characterised as domestic violence	Article 177 (1) & 182 PC & 35 LADV	1
<b>Total sexual violence cases</b>		<b>32</b>

#### TRENDS IN SENTENCING FOR CASES INVOLVING SEXUAL VIOLENCE

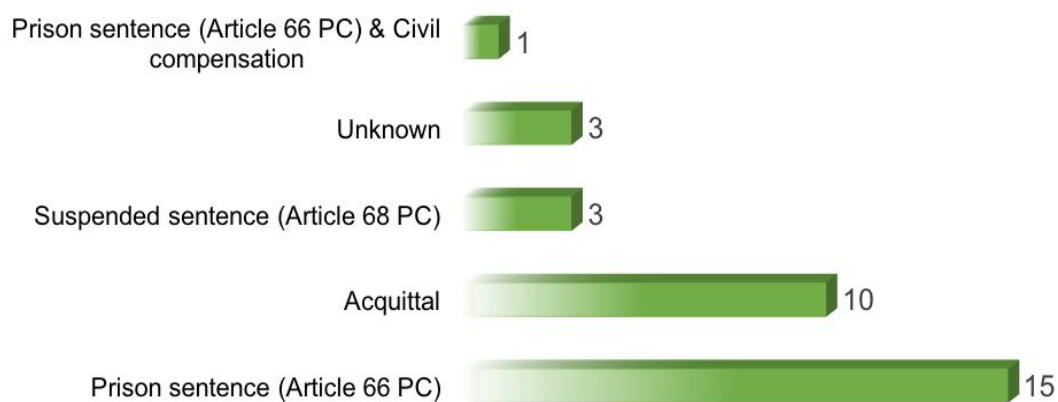
In 2017 JSMP observed that the courts continued to sentence perpetrators found guilty of committing crimes characterized as sexual violence to long terms of imprisonment. In some cases convicted persons received sentences of up to 28 years in prison. Although this is a major step forward, in most cases the court did not ask defendants to pay civil compensation to victims. In 2017 in 47 percent (47)% of cases (16 cases) perpetrators of the crime of sexual violence received a prison sentence. From these 16 cases, in only 1 case did the court ask the defendant to pay civil compensation to the victim. JSMP believes that compensation is a means to ensure complete recovery from the moral damage that the defendant has inflicted on the victim and places social responsibility on the defendant and his/her family. Compensation also sends a message to the public that sexual violence has a high cost, because in addition to receiving a prison sentence, the defendant also has the obligation to pay compensation to the victim.

**Table 9: Decisions in cases characterized as sexual violence monitored by JSMP in 2017**

Type of decision	Number	%
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Prison sentence (Article 66 PC)	15	47%
Acquittal	10	31%
Suspended sentence (Article 68 PC)	3	9,5%
Unknown	3	9,5%
Prison sentence (Article 66 PC) & Civil compensation	1	3%
<b>Total</b>	<b>32</b>	<b>100%</b>

**Graph 6: Trends in sentencing in cases characterized as sexual violence monitored by JSMP in 2017**



#### **Recommendations**

24. Guidelines on sentencing should be developed to guarantee consistency in sentencing in cases of sexual violence. Guidelines should set out the general principles for sentencing in cases of sexual violence, aggravating and mitigating circumstances. For example, rules for those who are repeat offenders, guidelines on alternative punishments and information on how to calculate civil compensation.
25. The courts should apply civil compensation in addition to prison sentences against defendants who have committed crimes involving sexual violence.

## 3. MINORS IN THE JUSTICE SYSTEM

### 3.1 CASES INVOLVING MINORS

In 2017 JSMP monitored 55 cases involving minor victims. These cases made up 7 percent (7 %) of all criminal cases monitored by JSMP.

Crimes against minors that were monitored by JSMP involved physical, emotional or sexual offences and neglect. From these cases, most of those brought to the courts involved sexual violence. In 2017, 32 percent (32%) of cases involved minor victims in cases of sexual violence.

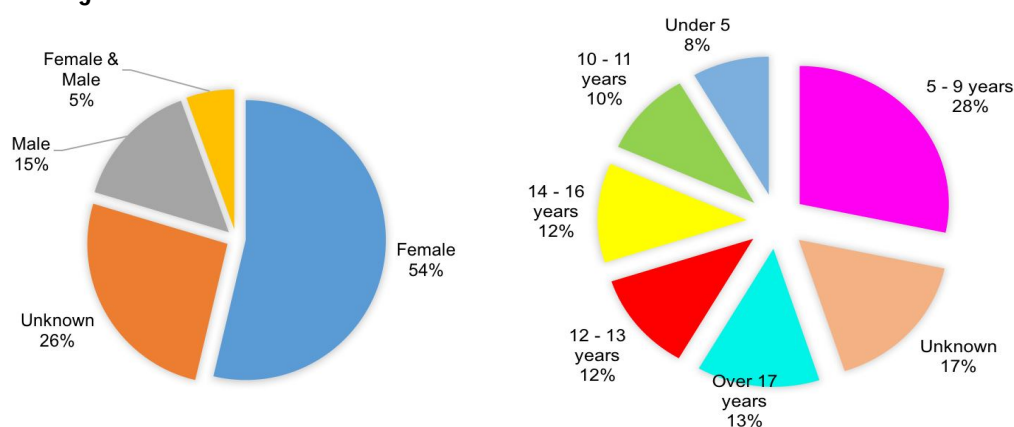
The graph below shows that in many criminal cases the victims were girls, accounting for 54 percent (54%). 15 percent (15%) of cases involved male victims, and 5 percent (5%) involved both female and male victims.

These crimes against minors were also broken down based on the age group of the minors. Some minor victims were aged 14-16 (12%), some were aged 5-9 (28%), and some were aged 12-13 (12%).

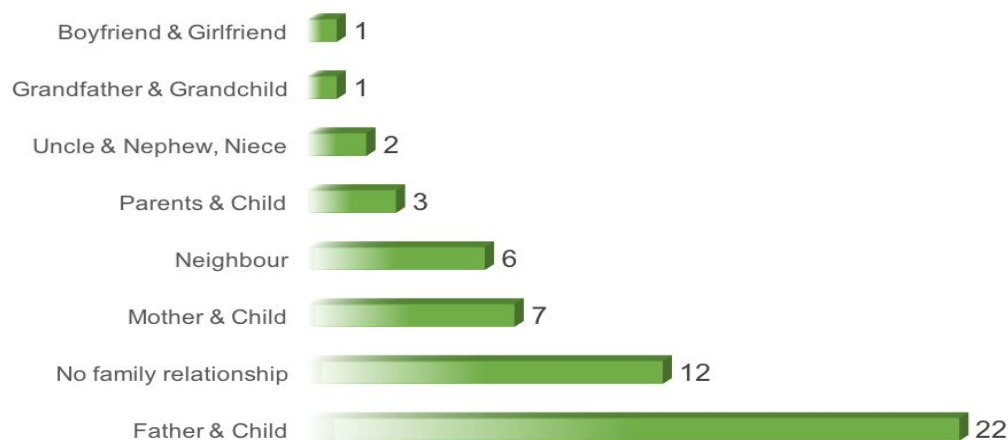
In 65 percent (65%) of all cases involving minors the perpetrator of the crime was a family member. In most of these cases the defendant was the victim's father, namely 41 percent (41%). In 24 percent (24%) of cases there was no family relationship between the defendant and the minor victim, and in 11 percent (11%) of cases the perpetrator was the victim's neighbour.

The graph below shows that girls continue to be vulnerable and intensive efforts are needed to protect these minors and to prevent other minors from similar experiences in the future. JSMP is concerned with this reality and demands for the relevant entities and the entire society to give adequate attention to these crimes involving minor victims especially crimes of sexual violence.

**Graph 7: Criminal cases involving minor victims monitored by JSMP in 2017 based on gender and the age of the victim**



**Graph 8: Criminal cases involving minor victims monitored by JSMP in 2017 based on the relationship between the victim and the defendant**



**Table 10: Cases involving minors (aged 0 – 16) monitored by JSMP in 2017**

Case type	Article (s)	Number of cases
Failure to fulfill an obligation to provide food assistance	Article 225 PC	13

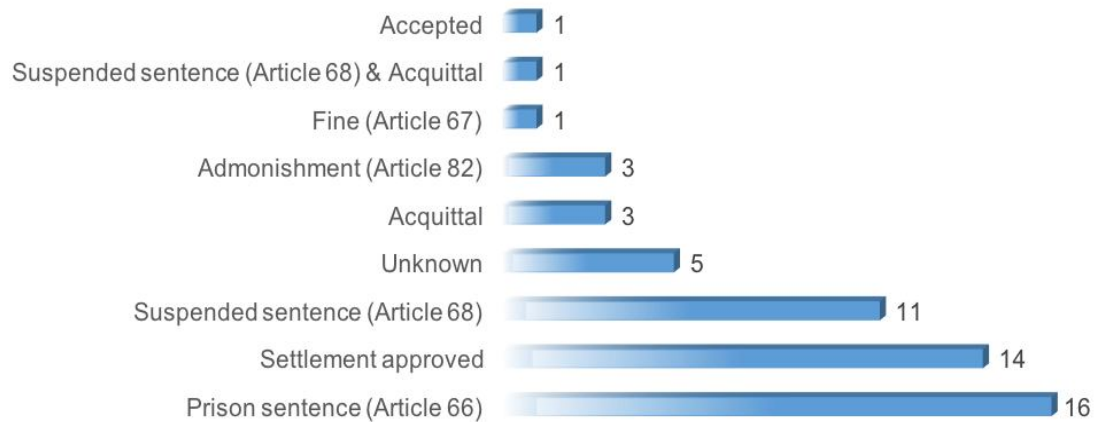
Simple offences against physical integrity characterised as domestic violence	Article 145 PC & 35 LADV	8
Sexual abuse of a minor with penetration	Article 177 (1) PC	7
Simple offences against physical integrity	Article 145 PC	4
Mistreatment of a minor	Article 155 PC & 35 LADV	4
Aggravated sexual abuse of a minor with other sexual act	Article 177 (2) & 182 PC	4
Aggravated sexual abuse of a minor with penetration	Article 177 (1) & 182 PC	3
Infanticide	Article 142 PC	2
Failure to fulfil an obligation to provide food assistance & Disobedience	Article 225 & 244 PC	1
Manslaughter	Article 140 PC	1
Infanticide & Complicity	Article 142 & 32 PC	1
Abandonment or exposure	Article 143 PC	1
Simple offences against physical integrity & Threats	Article 145 & 157 PC	1
Simple offences against physical integrity characterised as domestic & Threats	Article 145 & 157 PC & 35 LADV	1
Aggravated sexual abuse of a minor with penetration – Incest characterised as domestic violence	Article 177 (1) & 182 173 PC & 35 LADV	1
Aggravated sexual abuse of a minor with penetration	Article 177 (2) PC	1
Attempted, punishability of attempted & sexual abuse of a minor with other sexual act	Article 23 & 24 & 177 (2) PC	1
Adoption	Article 1854 CC	1
<b>Total cases involving children</b>		<b>55</b>

### 3.2 TRENDS IN SENTENCING IN CASES INVOLVING MINORS

In 2017 JSMP monitoring showed that the courts achieved a lot of progress in terms of sentences imposed against defendants who committed violence against minors. In 29 percent (29%) of cases perpetrators of crimes received prison sentences (16 perpetrators). From these 16 cases there were 2 cases where a prison sentence of 28 years was imposed in crimes committed by fathers against their own minor daughters.<sup>36</sup>

<sup>36</sup> JSMP Press Release entitled: Baucau District Court imposes a single penalty of 28 years in prison against defendant in crime of sexual abuse against a minor characterised as incest – 22 March 17, available at: [http://jsmp.tl/wp-content/uploads/2017/01/PrKazu-INSESTUAbuzuseksualhopenaprizau-tinan28Baucau\\_Tetum.pdf](http://jsmp.tl/wp-content/uploads/2017/01/PrKazu-INSESTUAbuzuseksualhopenaprizau-tinan28Baucau_Tetum.pdf) and: Court imposes prison sentence of 28 years for crime of rape characterised as incest - 4 August 2017, available at: [http://jsmp.tl/wp-content/uploads/2017/01/PrKazuINSESTUtinan28\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2017/01/PrKazuINSESTUtinan28_TETUM.pdf)

**Graph 9:Trends in sentencing in cases involving minors monitored by JSMP in 2017**



There has been progress in sentencing because the courts have put criminals in prison. However, JSMP has observed that there are still some cases where the charges do not reflect the circumstances of the crime. The case study below shows these trends and highlights our concern.

#### **Case study<sup>37</sup>**

The public prosecutor alleged that on the morning of 24 October 2015 the victim, who was aged 5, went with her younger sibling to buy instant noodles at a kiosk. When she was returning from the kiosk she crossed paths with the defendant. The defendant grabbed the victim by the arm, took her into the bushes and removed her underpants and clothing and laid the victim on the ground and then he rubbed his penis on the victim's vagina.

The victim screamed but the defendant told the victim to be quiet and not to tell anybody else or otherwise the defendant would kill the victim. Meanwhile the younger sibling of the victim sat down in the field crying and waited for her older sister. After the incident the victim returned home and told their father.

The prosecutor charged the defendant for violating Article 177.2 of the Penal Code on the sexual abuse of a minor under the age of 14, which carries a prison sentence of 5 - 15 years.

<sup>37</sup> JSMP Case Summary from the Baucau District Court, Case No: 0004/15.BCVMS [http://jsmp.tl/wp-content/uploads/2017/03/Final\\_SK-Baucau-Novembru-2017-hosi-xefe.pdf](http://jsmp.tl/wp-content/uploads/2017/03/Final_SK-Baucau-Novembru-2017-hosi-xefe.pdf)

The court also included Article 182.1 of the Penal Code on aggravation because the victim was only aged 5.

The court imposed a prison sentence of 13 years against the defendant. The court found that all of the facts in the indictment were proven because the defendant confessed his actions, and the victim confirmed the facts and the evidence was corroborated by a medical report.

In this case the prosecutor did not conduct an investigation and did not choose a specific article. Actually when formulating charges the prosecutor should conduct a thorough investigation regarding the relevant judicial facts including the victim's age. The age of the victim is a determinant for consideration when deciding a case, especially in cases characterised as sexual violence. Different decisions should be made based on the victim's age as a minor or an adult.

The Penal Code provides a specific article on aggravation that includes the victim's age as a minor. Article 182 of the Penal Code on aggravation states the penalties prescribed shall have their minimum and maximum limits increased by one third if the victim is less than 12 years. In this case, the victim was aged 5, that is, she was very young. However, the prosecutor did not manage to identify the age as an aggravating factor in relation to the defendant's actions and included Article 182 of the Penal Code in the charges. JSMP is concerned by the prosecutor's behaviour and believes that the prosecutor failed to choose the correct charge and was not careful and did not provide the appropriate sentencing options to the court.

However, JSMP values the court's ability to identify the relevant article on aggravation because the court also included Article 182.1 of the Penal Code on aggravation because the victim was aged just 5 years old.

#### **Recommendation**

26. The prosecution should choose a specific article, in addition to the associated facts as provided for in the Penal Code, as relevant circumstances for aggravation.

### **3.3 AMENDMENT TO THE PENAL CODE – A SEPARATE ARTICLE FOR THE CRIME OF INCEST**

JSMP believes that incest<sup>38</sup> is a crime that is extremely offensive to the values and morals of society because it causes such great harm to victims in relation to their long-term physical,

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<sup>38</sup> JSMP considers incest as crimes that involve family members who are related by blood, and other family-social relationships such as: father against his own child/adopted child, grandparent against grandchild, brother against sister, siblings who have the same mother or father and in some cases it can involve an uncle against a niece.



psychological and social development. Crimes characterized as incest normally place intense pressure on the victim because they involve a person exploiting a position of authority in the family. Incest is an abuse of trust and an abuse of power.

Based on JSMP monitoring in the courts during the 2012-2016 period there were approximately 42 cases of incest. Most victims were minor girls. In 2017 JSMP monitored 4 cases of incest and JSMP believes that this number reflects just a small percentage of the real number of cases of incest. This crime is hard to discover because there are a number of impediments faced by the victim such as coercion, threats, lack of information and other cultural impediments.

JSMP is concerned about the crime of incest. In 2015, JSMP together with ALFeLa, launched a submission entitled 'Amending the Penal Code to Better Protect Women and Children'. JSMP believes that the Penal Code is not yet strong enough to combat the crime of incest because when adolescent girls aged above 14 suffer sexual abuse from a family member the prosecutor must prove that the defendant used force or serious threats and the victim must prove that they resisted the sexual assault.

In this submission JSMP and ALFeLa recommended the inclusion of a new article in the Penal Code relating to the crime of incest that does not consider the victim's age and the consent of the victim.

JSMP observed that heavy sentences have been imposed in all cases involving incest. However JSMP believes that it is important and necessary to amend the Penal Code and to incorporate incest as a specific crime in the Penal Code to strengthen protection for victims, especially to remove arguments about age and consent in hearings.

**Recommendation**

27. Incorporate a specific article on incest in the Timor-Leste Penal Code which does not consider the victim's consent or age.

### 3.4 DRAFT LAW ON CHILD PROTECTION

A Draft Law on Child Protection is a positive step because it proposes a legal framework on child protection. For many years the Timor-Leste justice system has failed to guarantee and protect children in accordance with international obligations because there is no specific law on child protection. Therefore JSMP happily accepted the draft law proposed by the Ministry of Social Solidarity (MSS). Unfortunately, once again this law failed to be discussed by the National Parliament because MPs did not have enough time.

When this law is reintroduced to the next legislature it must be clear, consistent and realistic so that it can be implemented effectively. Analysis of this Draft Law considers the practical applications of some of the provisions and has raised some questions for the MSS and Parliament for consideration and attention before approving this Draft Law.

JSMP analysed the Draft Law on Child Protection and believes that some provisions are too general and obscure. Therefore in November 2017 JSMP made a submission to request the consideration and attention of the Ministry of Social Solidarity and members of the National Parliament before approving this Draft Law.

In the aforementioned submission JSMP considered the practical application of some provisions that have posed questions for the MSS and the National Parliament. These provisions relate to a minimum consultation process with local entities that have responsibility for the issues relating to children, and networks on child protection. JSMP is concerned about several issues in this Draft Law, for example: compulsory communication, authorisation to intervene, consent from parents for a medical examination, protection measures – institutional care, protection measures and processes – age of maturity, procedural issues, inter-ministerial monitoring committee, database at the national level, and telephone customer service.<sup>39</sup>

JSMP hopes that this draft law will be translated into Tetum and if possible into English to obtain input from international institutions in the field of children's rights and child protection, so they can participate effectively in this process.

In addition, JSMP also requests that after the draft law is translated into Tetum, the MSS should organise public consultation, especially with those institutions who are working on children's rights and child protection. This will help ensure that this Draft Law fully adheres to the Convention on the Rights of the Child and responds to the needs of children in Timor-Leste so that this law can be implemented effectively.

#### **Recommendations**

28. Provide a translation of the draft law on Child Protection in Tetum and English and hold public consultation especially with institutions working in the field of child protection and children's rights so that all people can contribute to producing a Draft Law that will truly respond to the needs of children in Timor-Leste.
29. The Ministry of Social Solidarity and Committee A of the National Parliament should reschedule and discuss this Draft Law as a legislative priority.

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<sup>39</sup> JSMP submission to the National Parliament, available at: <http://jsmp.tl/wp-content/uploads/2013/03/Analiza-ba-Esbosu-Lei-Protesaun-Labarik-MSS-2016.pdf>

## 4. WITNESSES IN THE JUSTICE SYSTEM

Witnesses carry out an important role in the formal justice in both criminal and civil cases because witnesses are a crucial element in providing evidence as set out in the law. Normally witnesses are those who have direct knowledge about a crime or they witnessed it directly and experienced it directly (victims).

The Timor-Leste Criminal Procedure Code provides for evidence that is admissible in a criminal case. Article 116.2 of the Penal Code on admissibility of evidence states that evidence can include a) statements made by the accused; b) statements made by the aggrieved party; c) witness testimonies; d) admission of guilt; e) expert evidence; f) documentary evidence; g) confrontation of witnesses; h) search of the crime scene; i) reconstruction of the facts.

Witness testimony is important proof or evidence in the criminal process. The Penal Code states that witnesses have the obligation to provide testimony when summoned by an authority, with the exception that a witness does not need to provide testimony when there is an impediment set out in the law. For example, Article 125 of the Criminal Procedure Code provides for lawful refusal to give a deposition, as a family member, or because of professional secrecy, pursuant to Article 126 of the Criminal Procedure Code as a representative of religious group, lawyer, doctor, journalist, etc.

Although witnesses play a very important role, witnesses often are faced with a range of risks such as threats to themselves or threats towards their family. Sometimes they provide testimony, but it is not credible and complete because of fear of potential threats or intimidation against

the witness or the family of the witness in relation to the testimony provided by the witness to the court to help the court administer justice. In addition, there is the probability that witnesses do not provide accurate information to the courts. If a witness provides false information, the witness can be charged under Article 279 of the Penal Code.

These circumstances naturally cause witnesses to feel unsafe and uncomfortable before the courts because they don't believe that the law will protect them and they avoid giving testimony or take the risk of breaking the law because there are no adequate protections for them even though the Law on Witness Protection came into force in 2009.

#### 4.1 MEASURES IN THE LAW ON WITNESS PROTECTION TO PROVIDE PROTECTION TO WITNESSES AND VICTIMS

Law No.2/2009 on Witness Protection was promulgated in 2009. The Law on Witness Protection sets out the application of measures for the protection of witnesses, in civil or criminal proceedings, when their lives, physical or psychological integrity, freedom or assets of considerable value are jeopardised due to their contributing to ascertaining the proof of facts or to the discovery of the truth which constitute the object of the proceedings.

Protective measures in this law include concealing the witness by concealing the witness' image or distorting his/her voice, taking the testimony via teleconference, or using another location to provide testimony, which includes the installation of the necessary technical devices, and restricted access to the place where testimony or statement shall be taken.

JSMP believes that protective measures do not require a lot of financial resources to carry out the important institutional plan and strategy of the courts and relevant institutions to implement these measures. Unfortunately during JSMP monitoring, JSMP did not see the courts introduce these measures properly.

In its previous justice sector annual reports, JSMP has continuously called on the attention of the relevant entities and the courts to implement protective measures such as avoiding transporting witnesses and victims together with defendants.

In addition to the protective measures mentioned in the Law on Witness Protection, JSMP believes it is important to build a separate room that is safe for victims and witnesses at the courts when they are waiting to appear in court. Based on JSMP monitoring in 2017, the Dili and Baucau District Courts don't have a separate room yet that is safe for witnesses and victims. Therefore when victims or witnesses attend the courts they sit together and the defendant and the family of the defendant who are present in court stare at them. It is probable that when there is direct contact between witnesses, defendants and the family of defendants, this will have a psychological impact on the witness including in cases involving the victim who is also a witness, and this will cause them to feel afraid. Coercion, intimidation and fear will influence them when they provide testimony or a statement.

The Government does not yet have a clear policy to prioritise the implementation of this law to establish facilities based on the provisions of this law to protect witnesses with the protective measures set out in the law. However, JSMP observed that in January and February 2017 the courts sought the means to protect witnesses when providing testimony to the court. For example, in trials of serious offences against physical integrity and attempted homicide. The court heard testimony from a witness on certain days of the trial, and heard testimony from defendants on alternative days. In addition to scheduling the examination of testimony on alternative days the court also did not identify the witness and protected the identity and address of the witness based on the request of the witness conveyed through the prosecutor.

In addition, in March and November 2017 JSMP observed a case of sexual violence against two minors in the Baucau District Court. The Court requested for the defendant to leave the courtroom when hearing testimony from the victim and witness. This was one way to reduce the trauma experienced by the victim and to ensure that the victim and witness could give their statements freely and comfortably. One of these cases involved the crime of incest committed by a father against his own daughter aged 13. The other case involved a neighbour and a child aged 5.

JSMP believes that this is a step forward for the court in providing protection to witnesses to avoid risk or danger to witnesses and can contribute towards discovering the truth based on the facts and to ensure protection based on the law. Also, this will encourage and motivate witnesses to collaborate with the formal justice process.

JSMP encourages the other courts to also safeguard witnesses by separating them from the defendants during trials.

**Recommendations**

30. JSMP continues to encourage the Government to immediately take steps to implement the Law on Witness Protection through the allocation of funds for equipment based on the measures set out in this law.
31. JSMP recommends for the courts to implement the same measures to protect witness and victims from coercion, threats or violence.

## 5. CASES INVOLVING STATE AUTHORITIES

### 5.1 DECISIONS HANDED DOWN BY THE COURT OF APPEAL IN CASES INVOLVING STATE AUTHORITIES

#### DOMINGOS DOS SANTOS CAERO, FORMER SECRETARY OF STATE FOR PUBLIC WORKS AND HIS REGIONAL COORDINATOR

##### **Judicial Facts**

On 20 July 2017 the Court of Appeal handed down its decision on an appeal lodged by the defendant Domingos dos Santos Caero, the former Secretary of State of Public Works, and José August dos Santos Freitas, the regional coordinator of Public Works, who were sentenced to 3 years and six months in prison. The defendant Domingos Caero was also ordered by the court to pay court costs of US\$200 and Jose Augusto Freitas was ordered by the court to pay court costs of US\$150. The Court of Appeal found the two defendants guilty of committing the crime of intentional mismanagement in relation to a project to construct a rural road in Cova Village at the Border in Bobonaro Municipality.

Initially the prosecutor charged the defendants with the crime of abuse of power provided for in Article 297 of the Penal Code,<sup>40</sup> and the crime of economic involvement in business provided for

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<sup>40</sup>Article 297 of the Penal Code on abuse of power states that: Any official who abuses powers or violates duties

in Article 299 of the Penal Code which had been previously proven together with the crime of intentional mismanagement at the Suai District Court as the court of first instance. However, the Court of Appeal annulled these charges and upheld the crime of intentional mismanagement.

The public prosecutor alleged that in 2009 the State provided US\$212,500 for a project to construct a rural road from Cova Village to the border. During the first phase the defendants used the money to construct the road, including paying tradesmen US\$135,300.03, but the road was not finalised. Then the defendants told a company to improve the road but it was still not finalised and the defendants paid the company US\$9,000.00 and the defendants gave back the rest of the money to the State totalling US\$25,000.00.

The prosecutor charged the defendant Domingos dos Santos Caero with violating Article 274 of the Penal Code on intentional mismanagement and Article 297 of the Penal Code on abuse of power. Meanwhile the prosecutor charged the defendant José Freitas for violating Article 303 of the Penal Code on forgery of documents or technical report and Article 299 of the Penal Code on economic involvement in business.

During the examination of evidence the defendant José Freitas stated that he was a technician for the rural road, and he had no knowledge about the matter and he did not meet up with the Maliana region public works supervisor and he did not enter a contract with the State. The defendant then stated that he also had no direct link with Mr. Domingos dos Santos Caero.

The defendant Domingos dos Santos Caero stated that he had control of the project but only with authorisation from the Prime Minister (former Prime Minister Xanana Gusmao), pursuant to Article 44 on the Emergency Judicial Regime. The defendant stated that he did not have any knowledge or responsibility in relation to the finance directorate in regards to payments.

In his final recommendations the prosecutor requested for the court to send the defendants to prison for 10 years or more. Meanwhile, the defence team requested for the court to uphold fair justice for the defendants because they completely confessed to the facts associated with this crime.

On 24 October 2015 the Suai District Court found that the two defendants were involved in the crimes of intentional mismanagement, abuse of power, economic involvement in business and forgery of documents or technical report against the State through the Ministry of public works. The Court concluded the matter and imposed a prison sentence of 10 years on the defendant Domingos Caero and ordered him to pay court costs of US\$ 200.00 and a prison sentence of 12 years against the defendant José Freitas who was also ordered to pay judicial costs of US\$ 150.00.

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#### JOÃO CANCIO FREITAS, FORMER MINISTER OF EDUCATION AND HIS FINANCE DIRECTOR

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inherent to his or her office, with intent to obtain, for him or herself or any third party, any unlawful benefit or to cause loss to another, is punishable with 1 to 4 years imprisonment if no heavier penalty is applicable by virtue of another legal provision.

## Judicial Facts

In 20 July 2017, the Court of Appeal issued its decision and sentenced the defendant João Cancio Freitas to 4 years and six months in prison and ordered him to pay civil compensation to the State totalling US\$1,410,000.00. The Court of Appeal found the defendant João Cancio guilty of committing the crime of intentional mismanagement in relation to the project to acquire Television and Radio Education when the defendant assumed the position of Minister of Education in 2009.

Meanwhile in relation to the defendant Tarcizio do Carmo, the National Director for Finance, Procurement, Logistics and Administration within the Ministry of Education at that time, the Court of Appeal acquitted the defendant from all charges because the Court of Appeal found that there was no proof to show that the defendant was involved in committing the crime of intentional mismanagement.

The Court of Appeal amended the judicial qualification of the crime of economic participation in business, (as provided for in Article 299 of the Penal Code<sup>41</sup>) (which was previously charged by the public prosecutor and proven by the Dili District Court as the court of first instance) to the crime of intentional mismanagement, as provided for in Article 274 of the Penal Code.<sup>42</sup>

In relation to this decision the Defence will make an extraordinary appeal on the revised decision from the Court of Appeal because the defence is not satisfied with the decision of the Court of Appeal that amended the juridical qualification without hearing the arguments of the defendant regarding this amendment.<sup>43</sup>

Previously the public prosecutor lodged an appeal with the Court of Appeal because he did not agree with the decision of the court of first instance on 20 July 2015 to sentence the defendant João Cancio to 7 years in prison and order him to pay civil compensation to the State totalling US\$500,000.00 and to pay court costs of US\$100.00. Meanwhile, in relation to the defendant Tarcizio do Carmo, the court of first instance sentenced him to 3 years and six months in prison, which was less than the 8 years recommended by the public prosecutor, and he was ordered to pay compensation of US\$200,000.00 and also to pay court costs of US\$50.00. The public

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<sup>41</sup> Article 299 (1) Any official who, due to holding public office, should be involved in a contract or other transaction or activity, and takes advantage of said position to obtain, for him or herself or another, directly or through a third party, any material gain or any other unlawful economic share, thereby harming public interests that he or she is charged to manage, oversee, protect or perform, is punishable with 2 to 8 years imprisonment. (2) If the conduct above results in losses to the State exceeding US\$ 10,000, the penalty is 3 to 15 years imprisonment.

<sup>42</sup> Article 274 (1) Any person who is in charge of disposing of or managing interests, services or assets of another party, even though partner of the company or corporate entity that owns said assets, interests or services, and does intentionally violate rules of control and management or act in serious breach of the duties inherent to his or her office, causing significant economic equity loss, is punishable with 1 to 4 years imprisonment. (2) If the assets, interests or services referred to in the preceding subarticle are owned by the State, a public utility company, cooperative or people's association, the perpetrator is subject to an applicable penalty of 2 to 6 years imprisonment. (3) The same penalties are applicable to any person who misappropriates, or allows misappropriation of property that were only to be disposed of within the scope and for the specific purposes of managing property of a third party.

<sup>43</sup> The Diariu Timor Post Newspaper, Pages 1 and 23, Monday, 24 July 2017 entitled 'Lawyer of João Cancio does not agree with decision of the Court of Appeal'.



prosecutor stated that the penalty and the civil compensation ordered by the Dili District Court was less than the loss suffered by the State because the equipment for the project was not used at all. The public prosecution in its final recommendation stated that the actions of the two defendants caused the State to suffer a loss of US\$1,410,000.00.

Meanwhile the defence lodged an appeal because the defence did not agree with the decision of the court of first instance and stated that his client did not commit the crime of economic participation in business.

The court of first instance found that the defendants did not follow the tender process in accordance with the Procurement Law because they appointed the Larakia company from Darwin to handle projects to establish TV and Radio Education. This means that the two defendants did not give an opportunity to other companies to compete in this tender and the two defendants were found guilty of causing the State to suffer a loss of US\$1,410,000.00 and providing dysfunctional service meant that children could not access, watch or listen to TV and Radio Education.

Before concluding this case the Court of First Instance through its panel of judges told the Public Prosecution Service to initiate a new investigation against the witness Agostu Barros as the Chief of Staff of the Ministry of Education, Paulo Asis Belo as the Vice Minister for Education and two International Advisors, because they were suspected of being directly involved in this case.

JSMP sought confirmation with the Public Prosecution Service in relation to the instruction to investigate the people identified by the court. However, after receiving the decision of the Court of Appeal that found that the defendant João Cancio Freitas was the only person involved in the crime of intentional mismanagement with an increase in the amount of civil compensation that the defendant must pay to the State, the Public Prosecution Service decided to shelve the investigation into those other people that were being investigated.

Previously, in September and October 2014 the Dili District Court tried a case involving the former Minister of Education and reached the phase of examining evidence and hearing from witnesses. However this process had to be suspended because an international judge who was presiding over this case and the prosecutor of this case were expelled from Timor-Leste, pursuant to a resolution of the National Parliament in October 2014 ordering the compulsory expulsion of international officers and advisors who were working in the justice system. Therefore, the courts had to reschedule the trial of all cases involving international judges or prosecutors, which also happened in this case.

The court did not manage to schedule a continuation of this matter within 30 days from the last hearing in October 2014. The court only rescheduled the trial in May 2015, after 7 months. Article 250.5 of the Criminal Procedure Code on uninterrupted character of hearings states that hearings that have been suspended must be resumed within 30 days, otherwise any evidence

loses its validity.<sup>44</sup> Pursuant to this provision this case had to be reheard because the evidence that had been produced early had lost its validity. The court retried the matter in May 2015 and handed down its decision on 20 July 2015.

### Comments

JSMP is pleased that the Court of Appeal handed down decisions in cases of corruption involving an authority of the State like João Cancio, who was the former Minister of Education, and Domingos dos Santos Caero, who was the former Secretary of State for Public Works. Even though almost 2 years had passed before court handed down its decision, the Court of Appeal managed to conclude this matter and end the uncertainty about the appeals in cases of corruption that had been pending several years before the Court of Appeal. Also the Court of Appeal ordered the defendants to pay for the loss suffered by the State as a consequence of the actions of the convicted persons.

JSMP believes that the Court of Appeal has the competence and legitimacy to amend the charges but it needs to notify the Public Prosecution Service and the defence about the amendment. Pursuant to Article 274<sup>45</sup> of the Criminal Procedure Code on changing a legal qualification, the Court needs to inform the Public Prosecutor and the Public Defender, or in this case the lawyer of the defendant, before handing down its decision. Unfortunately, in this case, the Court of Appeal did not adhere to the requirements of this article. The Court of Appeal should comply with this article to avoid causing the parties to feel confused and dissatisfied.

As discuss in the Section on the Court of Appeal, JSMP highlighted the importance of re-examining evidence through an open trial, so that the parties or their representatives such as the Public Prosecution Service and the Defence can properly understand proceedings in this case. The deliberation of the Court of Appeal without the participation of the parties could potentially cause the parties to feel dissatisfied because the deliberation was only held amongst the judges. This would be a reasonable reaction because they would be surprised and wouldn't understand the process and the motivation of the Court of Appeal in making the amendment. The court should guarantee that, if possible, all judicial decisions should be made in the presence of the parties or at least in the presence of their representatives in order to comply with principles of a fair trial that are guaranteed in Article 34 of the Timor-Leste Constitution.

JSMP recommends that in the future the Court of Appeal should hear the parties when re-examining evidence so that the parties can properly understand proceedings in their case, and find out and receive proper information on the grounds of why they lost or won the case.

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<sup>44</sup> Article 250 (5) An interrupted or adjourned hearing is resumed from the last procedural act performed; however, any proofs produced lose validity where the resumption of the hearing is not feasible within 30 days.

<sup>45</sup> Article 274 of the Criminal Procedure Code on changing legal qualification states that "Where the court believes that the facts contained in the indictment must have a legal qualification different from the one stated therein, even though this results in an increase in the maximum limit of the applicable penalty, the court reports it to the public prosecutor and the defender, giving them, if requested, a deadline for preparing their procedural position".

### **Judicial Facts**

The prosecutor alleged that in 2010 the Government of Norway, through an international bilateral cooperation mechanism, provided technical and financial assistance to the Government of the Democratic Republic of Timor-Leste (RDTL) for professional tendering. The defendant Bobby Boye,<sup>46</sup> was employed under this mechanism to be an international advisor to the Ministry of Finance, specifically in the field of petroleum tax, for a period of 1 year that ended in June 2011. However, because the Ministry of Finance continued to need this support for the recovery and liquidation of petroleum tax, the Directorate of Taxes decided to enter a new contract with the defendant Bobby Boye. The defendant Bobby Boye also acted to draft agreements relating to terms of the contract, competence and authority to carry out negotiations with petroleum companies that manage the collection of taxes in the Timor Sea. Bobby Boye lived in a house close to the defendant Tiago Guerra and his wife Tammy Guerra. In 2011 Tiago Guerra was working for the Digicel Company.

In 2011 the defendant Tiago Guerra established a company named Olive Unipessoal Lda in Timor-Leste with the main activity of providing business advisory services. In 2011 the defendant Tammy Guerra set up a company in Macau that also had the main activity of providing business advisory and consultancy services. The name of this company was Olive Consultancy Company Limited in Macau.

On 3 December 2011 the defendant Bobby Boye asked DOF Subsea – Norway to transfer US\$ 859,706.30 into the bank account of SIMONSEN Lawyers Firm DA. He asked DOF Subsea – Norway to transfer this money through Olive Consultancy Company Limited (Macau) that belonged to Tammy Guerra, through the BNU Bank in Macau. The Olive Consultancy Company Limited obtained \$10,000 as the escrow agent for this transaction.

### **Charges of the Prosecutor**

The public prosecutor alleged that the defendants Tiago Guerra and Chang Fong-Fong (Tammy Guerra) violated Article 295 (1) and (3) of the Penal Code (PC) on the crime of embezzlement, Article 303 of the PC on the crime of forgery of documents or technical report and Article 313 (a), (b) and (c) of the PC on the crime of money laundering.

### **Proceedings in Court**

During the examination of evidence, the defendants Tiago Guerra and Tammy Guerra chose to exercise their right to remain silent.

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<sup>46</sup> In 2013, while living in the US, Bobby Boye was arrested by the FBI and investigated for crimes of wire fraud and conspiracy. These charges related to his creation of a fake company “Opus & Best” while he was working as a tax adviser for the Ministry of Finance. The US Federal Court found that Boye had awarded “Opus & Best” US\$8 million in contracts from Timor-Leste for legal drafting services. Boye was ordered to repay \$3.51 million to the Government of RDTL.

The Witness Monica Rangel as the Director of Taxes confirmed the facts relating to debts and money lost. However she stated that she didn't really understand how the defendants could steal the money because the defendant Bobby Boye did a lot of business via emails that the witness did not read (she admitted that she did not really read all of his emails). The witness further testified that she did not know the defendants however she knew about the Olive Consultancy company, because Monica Rangel was responsible for the payment of taxes.

Another witness, Pascoela Maria Caero, who was the Chief of the Banking Oversight Division, testified that on 2011 the defendant Tammy Guerra made two unidentified transactions on the banking system. First the defendant transferred US\$805,000.00 and second the defendant transferred US\$402,000.00. The defendant made these two transfers from the SIMONSEN Lawyers Firm DA to Olive Consultancy Company Limited.

The witness Pascoela Maria Cairro further explained that the person could not be identified because of the BNU system or because of the request from the owner of the money or the person making the transfer. However, the witness maintained the conclusion that the defendant transferred the money.

Meanwhile, the defendant through her legal representative stated that one of the transfers was to Bobby Boye totalling US\$895,000.00 and the transfer of US\$402,000.00 was to the Toxen company in Germany. The court also examined several receipts relating to the transfer of money by the defendant Bobby Boye to the defendant Tammy Guerra totalling US\$10,000 including other transfer receipts from the defendant Tammy Guerra to the defendant Bobby Boye totalling US\$ 895,000.00 and to the Toxen company in Germany totalling US\$402,000.00.

### **Decision of the Dili District Court**

On 28 July 2017, the Dili District Court announced its decision in this case and sentenced the defendant Tiago Guerra and the defendant Chan Fong-Fong Guerra (Tammy Guerra) to 8 years in prison and the two defendants were ordered to pay compensation of US\$859,000.00 to the State of Timor-Leste.

After the ruling was announced, the Defendant Tiago Guerra and the defendant Tammy Guerra through their representatives lodged an appeal with the Court of Appeal against the decision of the Dili District Court, because they did not accept this decision. However, before the Court of Appeal could assess the substance of the appeal the defendants Tiago Guerra and Fong Fong Guerra fled Timor-Leste to Australia on a small boat from Betano, Manufahi District. It is alleged that the defendants Tiago and Tammy Guerra were assisted by three Timorese-Portuguese citizens who owned the boat. The Australian Authorities in Darwin detained the defendants but eventually handed over the defendants to Portugal.

### **Comments**

There were a range of reactions to this case and great concern from the outset when the police and immigration authorities arrested the defendants and took their passports at the Nicolau Lobato International Airport in Dili on 18 October 2014 and prohibited them from leaving Timor-Leste. Then they were subjected to the first questioning and the court imposed pre-trial

detention on the defendant Tiago Guerra. The defendant was detained in pre-trial detention for 8 months until 16 June 2015, before the Court of Appeal amended the coercive measures of pre-trial detention and imposed Proof of Identity and Residence and the requirement to report each week to the court.

There has been much concern through this entire process, starting with the issue of the lack of strong evidence to charge the defendants, as well as a lack of resources, long detention without charges, and the quality of translation during this process. Also there was strong rejection to the facts set out in the indictment that were baseless and the statements of witnesses that were contradictory and inconsistent.

The former President of the Republic, Dr. Jose Ramos Horta, also raised his concerns about this case. Dr. Ramos Horta said that he followed this process from the outset and knew the defendant (Tiago Guerra) to be an honest person who had always helped Timor-Leste. Ramos Horta believed that the defendants were victims of Bobby Boye. He hoped that the prosecution and the courts could quickly process this case and conclude the process against the defendants. Also, when the Dili District Court handed down its decision<sup>47</sup> and convicted the defendants Tiago Guerra and Tammy Fong Fong, in an interview with *Lusa*, Dr. Ramos Horta said that "this is a sad day for justice in Timor-Leste."<sup>48</sup> However he believed that the Court of Appeal would restore justice in this case.

The situation became even more complicated when the defendants illegally fled on 7 November 2017 and used a boat to travel from Timor-Leste and returned to Portugal via Darwin, Australia. It is alleged that some people contributed to helping the defendants flee Timor-Leste including the allegations against the Portuguese Embassy in Timor-Leste that the embassy provided Portuguese passports to the defendants so they could flee Timor-Leste.

These circumstances continue to illustrate the ineffectiveness of the Timor-Leste judicial system and shortcomings that need to be immediately resolved to guarantee public faith in a justice system that is effective, has integrity and the capacity to administer and guarantee justice for all people. This case also illustrates other concerns about the defendants' confidence in the capacity of the Timor-Leste judicial system to give them justice. Also, this case raises a number of questions for the public that have not yet been properly answered, including how can people flee from proceedings so easily, without efforts to prevent such occurrences in the future.

JSMP recommends that in the future, there should be more effective coordination between the relevant institutions such as the courts, immigration and PNTL to ensure that justice is administered properly.

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<sup>47</sup> The same reaction was given by the team of lawyers for Tiago Guerra and Tammy Guerra in relation to the publication of JSMP's Case Summary that was published on the ETAN emailing list ([info@etan.org](mailto:info@etan.org)) (East Timor and Indonesia Action Network), 24 October 2017.

<sup>48</sup> The Guerra Case - Contempt of the East Timorese Judiciary from as far as Europe:  
<http://www.easttimorlawandjusticebulletin.com/2017/11/the-guerra-case-contempt-of-east.html>

JSMP is also concerned about the quality of interpretation throughout the trial. In this case, the court only provided one interpreter to facilitate interpretation between Tetum, Portuguese and English. The interpreter had difficulty in properly interpreting during the trial process especially judicial terminology in Tetum, Portuguese and English, so therefore it was very difficult for court actors as well as the parties involved in the case to properly understand all of the proceedings. This situation was made more difficult because only one interpreter had to provide translation between three languages in such a complex case.

JSMP recommends for the courts to recruit interpreters in other languages and increase the knowledge of interpreters regarding judicial terms to ensure that trials can be conducted in a credible manner and avoid negative perceptions arising about cases brought before the courts.

## 6. CONCLUSION

This report is aimed at providing useful information to the public on progress achieved by the Timor-Leste justice sector, and challenges faced in 2017.

In 2017 the Timor-Leste justice sector continued to demonstrate important progress and also encountered challenges. Challenges included insufficient funds for the Court of Appeal, the continuing use of Portuguese in legal proceedings, and lack of interpreters in regional languages for trials.

JSMP monitoring in 2017 discovered that from amongst the crimes brought before the court, most involved gender-based violence. As recommended in previous reports, JSMP continues to highlight the urgent need to guarantee that court actors have legal guidelines focused on how to prepare charges and sentencing in cases involving women and children, including how to identify and apply articles on aggravating circumstance in charges against defendants in cases of violence against children.

## ANNEX A - STATISTICS

Table A – Criminal cases monitored by JSMP in 2017

Case type	Article(s)	Number of cases
Simples offences against physical integrity characterised as domestic violence	Article 145 PC & 35 LADV LKVD	345
Simples offences against physical integrity	Article 145 PC	150
Mistreatment of a spouse	Article 154 PC & 35 LADV	39
Threats	Article 157 PC	31
Smuggling	Article 316 PC	22
Property damage	Article 258 PC	21
Driving without a license	Article 207 PC	17
Reciprocal offences against physical integrity	Article 151 PC	16
Failure to fulfill an obligation to provide food assistance	Article 225 PC	13
Aggravated larceny	Article 252 PC	10
Simples offences against physical integrity & property damage	Article 145 & 258 PC	10
Aggravated property damage	Article 259 PC	9
Sexual abuse of a minor with penetration	Article 177 (1) PC	7
Manslaughter	Article 140 PC	7
Simples offences against physical integrity & threats	Article 145 & 157 PC	6

Threats & property damage	Article 157 & 258 PC	6
Simple offences against physical integrity characterised as domestic violence & threats	Article 145 PC & 35 LADV & 157 PC	6
Serious offences against physical integrity	Article 146 PC	5
Rape	Article 172 PC	5
Aggravated rape	Article 172 & 173 PC	4
Mistreatment of a minor	Article 155 PC & 35 LADV	4
Aggravated fraud	Article 267 PC	4
Aggravated sexual abuse of a minor with other sexual act	Article 177 (2) & 182 PC	4
Misappropriation of public assets characterised as corruption	Article 296 PC	4
Obstructing public authority	Article 243 PC	4
Attempted homicide	Article 23 & 38 PC	3
Attempted, punishability of attempted, homicide	Article 23, 24 & 138 PC	3
Negligent offences against physical integrity	Article 148 PC	3
Larceny	Article 251 PC	3
Negligent offences against physical integrity & driving without a license	Article 148 & 207 PC	2
Larceny & Property damage	Article 251 & 258 PC	2
Aggravated forgery	Article 304 PC	2
Aggravated rape – Incest, characterised as domestic violence	Article 172, 173 PC & 35 LADV	2
Aggravated homicide	Article 139 PC	2
Manslaughter & Driving without a license	Article 140 & 207 PC	2
Aggravated homicide characterised as domestic violence	Article 139 PC & 35 LADV	2
Robbery	Article 253 PC	2
Infanticide	Article 142 PC	2
Aggravated sexual abuse of minor with penetration	Article 177 (1) & 82 PC	2
Attempted, Punishability of attempted homicide & Serious offences against physical integrity	Article 23, 24 & 138 & 146 PC	1
Illegal gambling	Article 322 PC	1
Refusal to cooperate	Article 300 PC	1
Infanticide & Complicity	Article 142, 32 PC	1
Bearing false witness, providing false expert opinion, interpretation or translation	Article 279 PC	1
Crimes against endangered species or species at risk of extinction & Disobedience	Article 218, 244 PC	1



Crimes against fauna or flora	Article 217 PC	1
Property damage with use of violence	Article 260 PC	1
Attempted, punishability of attempted & Sexual abuse of a minor with other sexual act	Article 23, 24, 177 (2) PC	1
Embezzlement & Forgery of documents or technical report characterised Corruption	Article 295, 303 PC	1
Sexual acts with an adolescent	Article 178 PC	1
Defamatory false information	Article 285 PC	1
Embezzlement & Forgery of documents or technical report & Money laundering characterised as Corruption	Article 295 & 303 & 313 PC	1
Aggravated sexual abuse of a minor with penetration – Incest characterised violence domestic	Article 177 (1), 182, 173 PC & 35 LADV	1
Attempted aggravated homicide characterised as violence domestic	Article 23, 139 PC & 35 LADV	1
Kidnapping	Article 160 PC	1
Simple offences against physical integrity & Larceny	Article 145 & 251 PC	1
Aggravated appropriation through abuse of trust characterised as Corruption	Article 257 PC	1
Economic involvement in business characterised as Corruption	Article 299 PC	1
Attempted, punishability of attempted & Sexual coercion	Article 23, 24 & 171 PC	1
Homicide	Article 138 PC	1
Avoidance of customs duties	Article 317 PC	1
Unlawful entry	Article 185 PC	1
Embezzlement & Abuse of power characterised as Corruption	Article 295 & 297 PC	1
Manslaughter & Instigation	Article 140 & 31 PC	1
Unlawful entry & Property damage	Article 185 & 258 PC	1
Crimes against endangered species or species at risk of extinction	Article 218 PC	1
Attempted, Punishability of attempted & Arson	Article 23, 24 & 263 PC	1
Circulation of counterfeit currency	Article 308 PC	1
Homicide, Aggravated homicide characterised as domestic violence	Article 138 & 139 PC & 35 LADV	1
Sexual exploitation of a third party	Article 174 PC	1
Human trafficking & Aggravated & Forgery of documents or technical report	Article 163 & 164 & 303 PC	1
Passive corruption for a lawful act	Article 293 PC	1
Attempted, Punishability of attempted, Aggravated	Article 23, 24 & 139 & 263 PC	1

homicide & Arson		
Forgery of documents or technical report	Article 303 PC	1
Abandonment or exposure	Article 143 PC	1
Aggravated simple offences against physical integrity	Article 145 & 147 PC	1
Aggravated sexual abuse of a minor with penetration - Incest characterised as domestic violence	Article 177 (1), 182 PC & 35 LADV	1
Embezzlement characterised as Corruption	Article 295 PC	1
Active corruption & Driving without a license	Article 294 & 207 PC	1
Sexual abuse of a minor with other sexual act	Article 177 (2) PC	1
Simple offences against physical integrity & Serious offences against physical integrity characterised as domestic violence	Article 145 & 146 & 35 LADV	1
Sexual coercion	Article 171 PC	1
Fraud	Article 266 PC	1
Failure to fulfill an obligation to provide food assistance & Disobedience	Article 225 & 244 PC	1
Simple offences against physical integrity & Usurpation of property	Article 145 & 261 PC	1
Simple offences against physical integrity & attempted homicide characterised as domestic violence	Article 145 & 23, 138 PC & 35 LADV	1
Manslaughter & Driving without a license	Article 140 & 207 PC	1
<b>Total</b>		<b>829</b>

Table B – Civil cases JSMP monitored in 2017

Case type	Article(s)	Number of cases
Adoption	Article 1854 CC	1
Divorce by mutual consent	Article 1652 CC	1
<b>Total</b>		<b>2</b>

Table C – Cases JSMP monitored in 2017 by Court

Court	Criminal cases	Civil cases	Total
Baucau District Court	228	0	228
Dili District Court	273	2	275
Oecusse District Court	192	0	192
Suai District Court	136	0	136

Court of Appeal	0	0	0
<b>Total</b>	<b>829</b>	<b>2</b>	<b>831</b>

Table D – Case statistics from all Courts (Court of Appeal and District Courts) in 2017

<b>Criminal cases</b>	<b>Total</b>
Pending from 2016	3664
New cases	2731
Decision	2633
<b>Total pending</b>	<b>3762</b>

<b>Civil cases</b>	<b>Total</b>
Pending from 2016	1021
New cases	430
Decision	291
<b>Total pending</b>	<b>1160</b>

Table E – Case statistics from the Court of Appeal for 2017

**Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	101	106	108	107	105	113	122	129	129	118	117	116	101
New cases	26	22	16	11	23	16	21	3	8	19	13	13	191
Decision	21	20	17	13	15	7	14	3	19	20	14	13	176
<b>Total pending</b>	<b>106</b>	<b>108</b>	<b>107</b>	<b>105</b>	<b>113</b>	<b>122</b>	<b>129</b>	<b>129</b>	<b>118</b>	<b>117</b>	<b>116</b>	<b>116</b>	<b>116</b>

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	50	45	45	46	46	45	45	46	45	40	38	38	50
New cases	0	3	3	3	0	3	7	0	0	1	3	2	25
Decision	5	3	2	3	1	3	6	1	5	3	3	2	37
<b>Total pending</b>	<b>45</b>	<b>45</b>	<b>46</b>	<b>46</b>	<b>45</b>	<b>45</b>	<b>46</b>	<b>45</b>	<b>40</b>	<b>38</b>	<b>38</b>	<b>38</b>	<b>72</b>

Table F - Case statistics from Dili District Court for 2017

**Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending	2323	2320	2298	2363	2339	2382	2333	2452	2412	2387	2386	2383	2323

from 2016													
New cases	145	126	199	110	170	111	236	15	45	119	92	105	1473
Decision	148	148	134	134	127	160	117	55	70	120	95	71	1379
Total pending	2320	2298	2363	2339	2382	2333	2452	2412	2387	2386	2383	2417	2417

#### Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	604	598	603	601	608	622	619	622	624	628	640	644	604
New cases	16	23	20	19	25	11	16	6	11	24	10	22	203
Decision	22	18	22	12	11	14	13	4	7	12	6	8	149
Total pending	598	603	601	608	622	619	622	624	628	640	644	658	658

Table G – Case statistics from Baucau District Court for 2017

#### Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	544	539	565	546	537	542	537	499	499	500	505	492	544
New cases	28	63	37	42	33	43	23	0	16	55	32	13	385
Decision	33	37	56	51	28	48	61	0	15	50	45	62	486
Total pending	539	565	546	537	542	537	499	499	500	505	492	443	443

#### Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dez	Total
Pending from 2016	193	191	195	195	200	202	205	219	219	210	215	228	193
New cases	2	9	4	11	6	7	16	0	1	12	17	6	91
Decision	4	5	4	6	4	4	2	0	10	7	4	18	68
Total pending	191	195	195	200	202	205	219	219	210	215	228	216	216

Table H – Case statistics from Suai District Court for 2017

#### Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	634	619	575	611	610	619	652	653	649	667	671	678	634
New cases	36	11	59	21	55	54	22	1	33	34	26	30	382
Decision	51	55	23	22	46	21	21	5	15	30	19	50	358
Total pending	619	575	611	610	619	652	653	649	667	671	678	658	658

#### Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	146	149	163	175	174	174	174	188	188	190	197	198	146
New cases	6	17	12	1	7	8	15	0	4	7	2	3	82
Decision	3	3	0	2	7	8	1	0	2	0	1	0	27
Total pending	149	163	175	174	174	174	188	188	190	197	198	201	201

Table I – Case statistics from Oecusse District Court for 2017

#### Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	62	48	65	85	98	118	144	131	131	138	159	147	62
New cases	7	23	36	32	51	37	22	0	10	41	22	19	300
Decision	21	6	16	19	31	11	35	0	3	20	34	38	234
Total pending	48	65	85	98	118	144	131	131	138	159	147	128	128

#### Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2016	28	29	33	34	37	36	38	44	44	45	47	47	28
New cases	2	5	2	3	2	2	7	0	1	2	0	3	29
Decision	1	1	1	0	3	0	1	0	0	0	0	3	10
Total pending	29	33	34	37	36	38	44	44	45	47	47	47	47

## ANNEX B: CORRUPTION CASES MONITORED BY JSMP THAT REACHED FINAL DECISION IN 2017

Case Number	Case Type	Name of defendant	Chronology	Decision
Dili District Court				
0965.12/PDDIL	Misappropriation of public assets -Article 296 of the PC	Lucas da Costa	<p>The public prosecutor alleged that on 10 July 2012, the defendant, who was a MP, used a vehicle belonging to the National Parliament for campaigning, however the regime for the distribution of vehicles belonging to the National Parliament states that cars can only be used for the professional work of MPs.</p> <p>The defendant was charged for misappropriation of public assets (Article 296 of the PC)</p>	Acquitted

0511/14. PDDIL	<p>Crime of embezzlement , forgery of documents or technical report and money laundering – Articles 295, 303 &amp; 313 of the PC.</p>	<p>Tiago Guerra, Chan Fong Fong Guerra (Tammy Guerra) – Portuguese couple</p>	<p>The prosecutor alleged that in 2010 the Government of Norway, through an international bilateral cooperation mechanism, provided technical and financial assistance to the Government of the Democratic Republic of Timor-Leste (RDTL) for professional tendering and the defendant Bobby Boye was exercising the function of international advisor to the Ministry of Finance, specifically in the field of petroleum tax, for a period of 1 year that ended in June 2011. However, because the Ministry of Finance continued to need this support for the recovery and liquidation of petroleum tax, the Directorate of Taxes decided to enter a new contract with the defendant Bobby Boye.</p> <p>The defendant Bobby Boye also acted to draft agreements relating to terms of the contract, competence and authority to carry out negotiations with petroleum companies that manage the collection of taxes in the Timor Sea. Bobby Boye lived in a house close to the defendant Tiago Guerra and his wife Tammy Guerra. In 2011 Tiago Guerra was working for the Digicel company.</p> <p>In 2011 the defendant Tiago Guerra established a company named Olive UnipessoalLda in Timor-Leste with the main activity of providing business advisory services. In 2011 the defendant Tammy Guerra set up a company in Macau that also had the main activity of providing business advisory and consultancy services. The name of this company was Olive Consultancy Company Limited in Macau.</p>	<p>The defendants were sentenced to 8 years in prison and ordered to pay compensation of US\$859,000.00, by the Court of First Instance (DDC), but the defendants fled from Timor-Leste on 07 November 2017 while the appeal was being processed.</p>
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			<p>On 3 December 2011 the defendant Bobby Boye asked DOF Subsea – Norway to transfer US\$ 859,706.30 into the bank account of SIMONSEN Lawyers Firm DA. He asked DOF Subsea – Norway to transfer this money through Olive Consultancy Company Limited (Macau) that belonged to Tammy Guerra, through the BNU Bank in Macau. The Olive Consultancy Company Limited obtained \$10,000 as the escrow agent for this transaction.</p> <p><u>Charges of the Prosecutor</u></p> <p>The public prosecutor alleged that the defendants Tiago Guerra and Chan Fong-Fong (Tammy Guerra) violated Article 295 (1) and (3) of the Penal Code (PC) on the crime of embezzlement, Article 303 of the PC on the crime of forgery of documents or technical report and Article 313 (a), (b) and (c) of the PC on the crime of money laundering.</p>	
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0095/15. PGGCC	Aggravated abuse of trust - Article 257 of the PC	Jaime Menezes, Ermenegildo de Jesus	<p>The prosecutor alleged that starting in 2009 the defendants were working as contracted staff at the Specialised Investment Agency under the Ministry of Economic Development. This agency handed over Megapro motorcycles to the defendants to facilitate their work. However, after the contract of the defendants was terminated in December 2014, the defendants did not hand over the two motorcycles.</p> <p>The defendants were charged with aggravated abuse of trust (Article 257 of the PC)</p>	The two defendants received a sentence of 2 years in prison, suspended for 3 years
0230/14 PDDIL	Economic involvement in business - Article 299 of the PC	Francisco da Costa Borlaco	<p>The public prosecutor alleged that in 2007-2008 the Ministry of Health opened a tender for the construction of the Baucau Referral Hospital. The budget for this project was 4 million and the company that won the tender was Morgin Construction from Korea. The works had only reached 4 percent and the company abandoned construction.</p> <p>The defendant was the Director General of Procurement in the Ministry of Finance, and he personally signed the request for payment from a Ministry of Finance advisor to pay workers who had been abandoned by the Morgin company. The defendant's actions caused the State to suffer a loss of US\$107,028.24.</p> <p>The defendant was charged with economic participation in business (Article 299 of the PC)</p>	7 years in prison and compensation to the State of US\$106.000 However, the defendant through his legal representative will appeal the decision

0198/16. DINFT	Misappropriation of public assets -Article 296 of the PC	Oracio Xavier	<p>The public prosecutor alleged that on 24 December 2016 the defendant was a contracted staff member in the Department of Finance within the Ministry of Education. On the aforementioned date (24 December 2016) the defendant asked permission from his superior to use a Hilux vehicle on the evening of the 24<sup>th</sup> and the director agreed. However after the evening of the 24<sup>th</sup> the defendant did not hand back the vehicle to the ministry and the defendant continued to use it on 25 December 2016 to take his family back and forth in Dili.</p> <p>On the afternoon of 25<sup>th</sup> December the defendant returned from Bemori and had an accident when he collided with the side of the road and two tyres split open and the front of the car was smashed in. This act caused the State to suffer a loss of approximately US\$2,168.00 based on an estimate from mechanics.</p> <p>The defendant was charged for misappropriation of public assets (Article 296 of the PC)</p>	Fine of US\$120.00
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0020/17.PGGCC	Misappropriation of public assets -Article 296 of the PC	VitorAdelfredi Maia	<p>The public prosecutor alleged that on 27 May 2016 the defendant, who was the Vice President of the Board of the Timor-Leste Port (APORTIL), was driving a Toyota Rav4 with the number plate 05-000G, belonging to the Ministry of Public Works, Transport and Communication. The defendant drove the car from Dili to the Batugade Border with the intention of participating in a meeting between former members of the São Jose Dili Secondary School, in Kupang, Indonesia.</p> <p>The defendant drove the car without the permission of the defendant's superior and also the aforementioned day was a Sunday (holiday), and Decree-Law No. 08/2003 on the Regulation, Assignment and Use of State Vehicles prohibits the use of cars on holidays. When he reached the Batugade Border in Bobonaro the defendant stopped the car to continue his trip to Kupang via an airplane from Atambua, Indonesia.</p> <p>On 29 May 2017 the defendant returned from Kupang, Indonesia, and drove the car back from Batugade, Bobonaro District to Dili. When he arrived in Vatuvaro Village, Maubara Sub-District, Liquica District, the car was hit by a minibus and as a result the front right hand side of the car was damaged.</p> <p>The defendant was charged for misappropriation of public assets (Article 296 of the PC)</p>	Fine of US\$300.00
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Baucau District Court				
0598/13.PDBA U	Misappropriation of public assets - Article 296 of the PC	Paulino Miguel	<p>The public prosecutor alleged that on 7 April 2013 the defendant was driving a car with the number plate 04096 G and picked up LdS (Commander of PNTL in Manatuto District) to attend a meeting in Dili. After the defendant dropped off LdS in Dili, LdS told the defendant to return to Manatuto and park the car at the office and the car key was given to a driver. The defendant stopped the car at the office but the defendant did not hand over the car key.</p> <p>On 8 April 2013 at 3am the defendant did not tell the security guard on duty and did not have permission from his commander, and the defendant drove the car and had an accident in Masin, Manatuto and the car suffered serious damage. As a result of this damage the State had to spend US\$12,000.00 to fix the car.</p> <p>The defendant was charged for misappropriation of public assets (Article 296 of the PC) as well as Article 3 of Decree Law No.8/2003.</p>	6 months in prison, suspended for 1 year
Suai District Court				

126/PEN/2016 /TDS	Crime of embezzlement, forgery of documents or technical report – Articles 295 & 303 of the PC.	Daniel Gomes de Araujo	<p>The public prosecutor alleged that on 8 October 2014 the defendant who was the Director at the 5th September Primary School in Cassa, was given instructions by the Ministry of Education National office to hold a contest at the primary level. The budget allocated for this contest came from the Ministry of Education totalling US\$1,000 which was transferred via BNCTL. Because the contest was held at other schools and was a long distance away, the defendant gave US\$ 15.00 each to three teachers and 3 students to attend the contest.</p> <p>This was not the amount prescribed by the Ministry of Education, and should have been US\$35.00 for each person. The teachers who received the money were dissatisfied and made a complaint against the defendant. In addition, the teachers also suspected the defendant of manipulating the remaining money amounting to US\$392.00 when he drafted and submitted a report to the Ministry of Education.</p> <p>The defendant was charged with embezzlement (Article 295 of the PC) and forgery of documents or technical report (Article 303 of the PC)</p>	Acquitted
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