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EXECUTIVE SUMMARY

In 2018 JSMP monitored 1,038 court cases¹, comprising 1036 criminal cases and 2 civil cases. This is an increase from 831 cases in 2017. There was an increase in the number of cases processed by the courts, and JSMP was also able to monitor more cases in 2018 than in previous years. The following graph shows that the number of cases monitored by JSMP in the district courts has increased. Meanwhile, JSMP was still unable to access trials at the Court of Appeal, because the Court of Appeal did not conduct trials that were open to the public and continued to just examine documentation from cases at first instance and hold deliberations. Therefore, throughout 2018 JSMP did not monitor a single case at the Court of Appeal, even although the Court of Appeal managed to complete 160 criminal cases and 16 civil cases.

In 2018 the justice sector faced a range of challenges, because there was a political impasse². However, the justice sector continued to be productive and experienced change in relevant areas. These changes included the appointment of two judges to the Court of Appeal, the introduction of a program to examine and evaluate the work performance of judicial magistrates and public defenders, and the appointment of the Public Defender-General and his Deputy Public Defender-General. In addition, JSMP observed changes to the Legal and Judicial Training Centre.

JSMP also noted other important progress, for example the courts continued to try cases of corruption involving members of government and former members of government. In 2018 the courts managed to try and complete 9 corruption cases involving public servants (Annex B) from 14 cases processed. In addition, there was an increase in human resources in 2018, because 13 trainees who attended training at the Legal and Judicial Training Centre finished their training. These 13 trainees comprised 3 judges, 5 prosecutors and 5 public defenders.

¹ Complete statistics on cases monitored by JSMP in 2017 including cases tried by the courts are available in Annex A.

² The political impasse started immediately after the general election in 2017 in which no party won enough of a parliamentary majority to form government. Fretilin won 29.7 percent with 23 seats and was invited by President Francisco Guterres “Lú-Olo” to form the VII Constitutional Government. After extensive negotiations, FRETILIN and PD formed a minority government holding 30 out of the total 65 seats in parliament. CNRT, PLP and KHUNTO agreed to remain in parliamentary opposition as “Alliance of Parliamentary Majority” (AMP). The AMP opposition continued to reject the Fretilin government’s program which the President of the Republic dissolving the National Parliament on 26 January 2018.

Meanwhile challenges faced by the justice sector in 2018 have included a reduction in funds available to the judicial institutions due to the political impasse. These institutions have sustained themselves with a duodecimal budget to implement their programs.

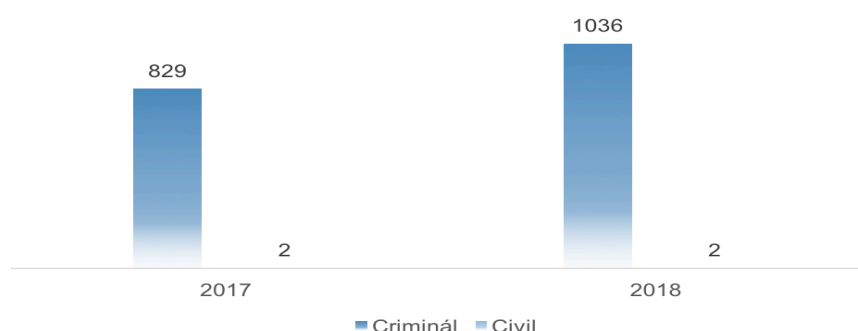
As shown in the table below the budget of the Ministry of Justice in 2018 was reduced by 22% from 2017, so many programs were not implemented. The budget for the Court of Appeal was reduced by 31.6%. This reduction meant the Court of Appeal was unable to respond to the limitations faced by the district courts and this had a massive impact on the administration and functioning of the courts. This has serious implications for basic and day to day services, meaning that the courts cannot respond to letters rogatory, take appeal requests to the Court of Appeal, inspect crime scenes and notify the parties. All of the district courts are facing the same situation. The Public Prosecution Service also had a lower budget than 2017, with a decrease of US\$1,535,000 (37%).

The reduction in budget also meant that, sometimes judges and court officials needed to use their own money to buy fuel for vehicles to facilitate deliberations on release warrants for prisoners who have served their sentences; because this is mandatory according to the law.

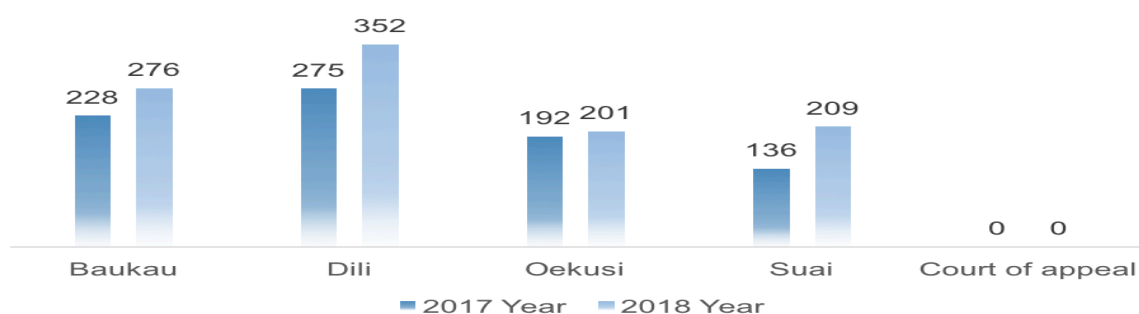
Another challenge is the issue of language and use of non-official interpreters in the courts, as well as the ongoing lack of public access to the Court of Appeal.

Also, the Court of Appeal needs to take its time to attend to other cases of a political nature such as requests for abstract review of constitutionality made by parliamentary benches or the President.

Total 1: Total number of cases monitored by JSMP in 2018 compared to 2017



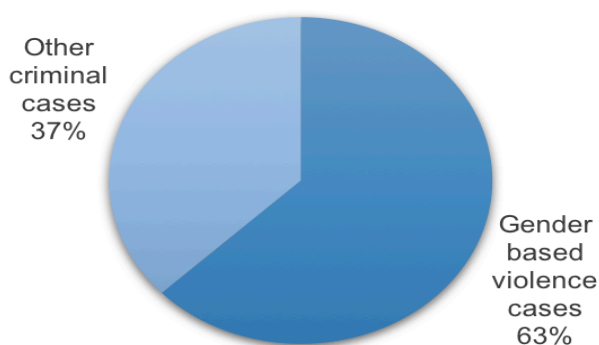
Graph 1: Total number of cases at the District Courts monitored by JSMP in 2018 and 2017 based on jurisdiction



In 2018 JSMP also monitored cases heard by the mobile courts. JSMP monitored 168 cases heard by the mobile courts, which is an increase from 147 cases in 2017. There was an increase in the number of cases heard by the mobile courts and JSMP was able to monitor more cases.

This report includes analysis on cases involving gender-based violence that were dealt with by the courts. As shown in Graph number 2 below, the courts continue to hear a large number of cases involving gender-based violence. The data and statistics that JSMP obtained from the courts did not include specific information on the type and nature of crimes, therefore it is difficult for JSMP to compare the most common types of cases heard by the courts.

Graph 2: Cases of gender-based violence committed against women and girls in comparison with other criminal cases monitored by JSMP in 2018



When monitoring these cases JSMP observed that in most cases involving domestic violence the public prosecution service and the courts did not process these cases based on the requirements of the Penal Code. Prosecutors still failed to select the appropriate charges based on the nature and seriousness of the crime because they selected the wrong article, and therefore did not provide the court with the option to apply an appropriate punishment.

In terms of sentencing in cases characterized as domestic violence in 2018, the most common penalties imposed by the courts were suspended prison sentences. Rules of conduct and other obligations were not applied consistently in suspended prison sentences and the courts continued to impose fines in cases involving domestic violence.

JSMP has also observed that in most cases the courts did not order the defendant to pay civil compensation to the victim pursuant to Article 284 of the Criminal Procedure Code³ and Article 69 of the Penal Code.⁴ Recently between 2016-2018 in cases involving rape and the sexual abuse of minors characterized as incest the courts imposed a range of sentences on defendants; the minimum prison sentence was 4 years and the maximum was 28 years. During 2018 there were 25 cases where perpetrators of rape received a prison sentence. From these 25 cases, only in 2 cases the court asked the defendant to pay civil compensation to the victim.

JSMP believes that the application of civil compensation against defendants is a means to redress the victim's suffering and moral damage because the defendant's actions have had a serious psychological impact on the victim, especially in cases involving victims with special needs such as disabled persons.

In 2018 JSMP, ALFeLa and other teams continued to provide advocacy and met with the President of the National Parliament, Komisaun F of the National Parliament, the Minister of Justice and the Secretary of State for Equality and Inclusion in relation to amending the Penal Code to create a separate article regarding the crime of incest. In these meetings these institutions reacted positively and agreed with JSMP's position that a separate article is required for the crime of incest, but in practice there are no signs yet that the relevant ministries have made this a priority.

This report also outlines 14 cases of corruption⁵ involving State authorities or ex-members of Government, including the case of the former Minister of Justice, Lucia Lobato from the Fourth Constitutional Government and Gastão de Sousa, the former Secretary of State for Public Works from the Fifth and Sixth constitutional Government. JSMP will analyze proceedings in cases involving Lucia Lobato in relation to the application of Indonesian Law No. 31/1999 in the court's decision imposed in this case. JSMP believes that applying the principle of retroactivity goes against the general principles as well as the legal framework of Timor-Leste, as well

³ Article 284 of the Criminal Procedure Code on deciding on a request for compensation states that a defendant can be ordered to pay compensation if a loss has occurred.

⁴ Article 69 of the Penal Code on suspension of a prison sentence on condition that certain duties be performed requires a defendant to redress harm caused by a crime.

⁵ In 2018 JSMP monitored 10 cases of corruption: 8 cases were decided and 2 were ongoing. In this report JSMP outlines 8 cases that have been decided. This information is available in Annex B.

as the Timor Leste Constitution as argued by the defence, and Article 3.3⁶ of the Timor-Leste Penal Code that states that the law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

JSMP hopes that this 2018 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.

⁶ Article 3.3 of the Penal Code on applicability of criminal law states that the law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

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

Courts

1. JSMP recommends for the Public Prosecution Service to recruit more court clerks to support the work of prosecutors to speed up the processing of cases registered at the Public Prosecution Service.
2. Provide training to increase the knowledge and understanding of interpreters regarding legal terminology, both interpreters who speak the official languages and regional languages.
3. Recommend for the mobile courts not to conduct trials until late at night. Ensure the quality of proceedings, rather than the quantity.
4. 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.

Accessibility of trials at the court of appeal

5. Request for the Court of Appeal to hold hearings to announce a decision or when re-examining evidence, so the parties can properly understand their case.
6. JSMP recommends that in the future the Court of Appeal needs to listen to the parties when re-examining evidence so that the parties completely understand proceedings in their case and can find out and receive correct information about the reasons their case was successful or unsuccessful.

Language

7. Request for the court to increase the knowledge of interpreters about legal terminology, in Tetum, Portuguese and other languages
8. Compile a list of non-official interpreters to assist the court when a need arises, and also provide them with basic training on legal terminology.

Gender Equality

9. JSMP requests for the prosecution and the courts to thoroughly analyse and consider the relevant facts and circumstances in such crimes and the potential consequences that could affect the entire circumstances of the victim.
10. JSMP 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.
11. Prosecutors should proactively evaluate the facts produced during a trial and select the appropriate provisions in cases of domestic violence based on the seriousness and circumstance of each case to ensure that the sentence imposed in each case is proportional and reflective of the defendant's actions.
12. 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 to help the courts identify appropriate penalties and

protection measures based on the principles of the Penal Code and the Law Against Domestic Violence.

13. The courts should apply rules of conduct in more cases and order convicted persons to report to local authorities such as the village chief to guarantee the aim of the sentence. 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.
14. If courts believe that a fine will impose a financial burden on the household, even though a fine is considered to be the best option, the courts need to fulfil the requirements set out in Article 38 of the Law Against Domestic Violence.

Cases of rape

15. JSMP requests for the court to develop sentencing guidelines to guarantee consistency in sentencing in cases of sexual violence. These 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.
16. JSMP has continuously requested for the courts to apply civil compensation in addition to prison sentences against defendants who have committed crimes involving sexual violence.

Minors in the justice system

17. JSMP recommends for the Public Prosecution Service to use the specific article, namely Article 155 of the Penal Code, in cases involving children, to enable appropriate sentencing.
18. Incorporate a specific article on incest in the Timor-Leste Penal Code that does not consider the victim's consent or age.

Role of the public defender according to the law in Timor-Leste

19. Recruitment is required to increase the current number of public defenders to respond to the ever increasing number of cases.
20. The Office of the Public Defender should be financially independent and should not be financially dependent on the Ministry of Justice so that they can manage their own resources based on existing needs.
21. Public defenders need to adhere to the law and the Statute of the Office of the Public Defender and only provide assistance to those lacking economic means, to allow private lawyers to provide assistance.

INTRODUCTION

This report compiles the results of JSMP's general observations and analysis of developments and challenges including relevant activities that have taken place in the Timor-Leste justice system in 2018. The last section of this report contains substantive and practical recommendations for the consideration of relevant institutions that could further improve the justice system in the future.

JSMP congratulates the judicial actors because they have worked hard in 2018, even though they have faced a range of challenges and limitations. JSMP would also like to express its appreciation to the judicial actors who have continued to display their willingness and desire to collaborate with the JSMP team by providing relevant data to facilitate the production of this report.

The structure of the report is as follows:

Section 1 – The state of the justice sector in 2018

This section discusses key developments in the justice sector in 2018, and focuses on the appointment of two judges to the Court of Appeal, the examination and evaluation of the work performance of judicial magistrates and public defenders, the appointment of a Public Defender-General and his Deputy and changes to the Legal and Judicial Training Centre.

This section also outlines funding and human resources, and the results of JSMP monitoring of the Mobile Courts and the accessibility of the Court of Appeal, as well as the challenges that the courts continue to face in relation to the issue of language.

Seksaun 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 2018.

Section 3 – Minors in the justice system

The third section outlines children's access to the justice system in 2018. This part underlines the need for prosecutors and the courts to identify specific articles for cases involving children. This section also discusses the need for prosecutors to make requests, and for the courts to order defendants to pay civil compensation to victims. Also, emphasis is given to the importance of amending the Penal Code to have a separate article on incest.

Section 4 – Cases involving State authorities

The fourth section discusses court decisions in cases of corruption involving members of government authorities and former members of government and problems with the application of law in relevant cases.

Section 5 – The role of the Office of the Public Defender in accordance with the law in Timor-Leste

The fifth section discusses the role of the Office of the Public Defender in accordance with the law in Timor-Leste. The Office of the Public Defender plays an important role in ensuring and guaranteeing equal access and justice for all citizens, by upholding the commitment to guarantee the rights of citizens to access the courts and to obtain legal advice, so that all citizens know their rights.

This report ends with a conclusion that provides a useful summary of the findings and recommendations contained in this report to improve the justice system in the future. The last section includes annexes that contain statistics about cases monitored by JSMP and trials conducted by the courts and a summary of decisions handed down in cases of corruption monitored by JSMP.

1. OVERVIEW OF THE JUSTICE SECTOR IN 2018

1.1 KEY DEVELOPMENTS IN THE JUSTICE SECTOR

In 2018 the justice sector continued to show a range of progress, although at the same time the justice sector also continued to suffer challenges because of the political impasse that had direct and indirect consequences on the administration of the justice sector in general and the work of the courts. However, JSMP noted a range of important developments, considered to be steps forward in the justice sector during 2018. These developments included the appointment of two judges to the Court of Appeal, the examination and evaluation of the work performance of judicial magistrates and public defenders, the appointment of a Coordinator to the Office of the Public Defender and changes to the Legal and Judicial Training Centre.

APPOINTMENT OF JUDGES TO THE COURT OF APPEAL

The Court of Appeal functions as the superior court in Timor-Leste to deal with appeals taken before the Court of Appeal. For many years the Court of Appeal has faced challenges in relation to human resources, just like the district courts. Also, the Court of Appeal only has three appeal judges who need to attend to all criminal and civil appeals, as well as attending to requests for review of constitutionality from sovereign organs relating to issues requiring the intervention of the Court of Appeal which also exercises the function of the Supreme Court of Justice in accordance with the Constitution.⁷

Based on data from the Court of Appeal, in 2018 the Court of Appeal received 246 new cases (216 criminal cases and 30 civil cases). There were 144 cases pending from the previous year (111 criminal cases and 33 civil cases). These cases did not including requests for preventive review from sovereign organs or claims made by political parties as well as claims made by individuals.

The President of the Court of Appeal acknowledged that previously three judges found it difficult to deal with cases efficiently and quickly. In relation to these challenges, on 21 September 2018 the President of the Court of Appeal, the Honourable Judge Deolindo Dos Santos, via a decision made by the Superior Council of Judicial Magistrates,⁸ promoted and appointed two second class judges⁹

⁷ Articles 85 and 149 of the Timor-Leste Constitution on preventive appraisal deals with constitutionality and unconstitutionality, and Article 152 of the Constitution deals with specific reviews.

⁸ Article 128.1 of the Timor-Leste Constitution 1 states that the Superior Council for Judicial Magistrates is the organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges.

from the Dili District Court to perform the function of appeal judges at the Court of Appeal to provide support to the other three judges already working at the Court of Appeal. With this appointment the Court of Appeal now has five appeal judges including the President of the Court of Appeal.

JSMP hopes that the appointment of these two judges will help speed up the processing of pending cases and guarantee public access to proceedings at the Court of Appeal.

EXAMINATION AND EVALUATION OF THE WORK PERFORMANCE OF JUDICIAL MAGISTRATES AND PUBLIC DEFENDERS

The examination of the work performance of judicial actors is very important. This is because the aim of the examination is to evaluate and measure the capacity and work performance of judicial actors. This examination started in 2017 and continued in 2018 for court actors who were not evaluated in 2017.

This examination was carried out by two international inspectors for judicial magistrates and one international inspector designated for magistrates with the assistance of one East Timorese inspector. The public defenders were evaluated by an international public defender. Based on the results of this examination the court actors were split into the following classes as shown in the following table:

Table 2 : Classes of judicial magistrates and public defenders in 2018 :

		Class Category		
		Class 1	Class 2	Class 3
Judicial Magistrates	Judge	-	5	28
	Prosecutor	3	10	19
Agents of the Office of the Public Defender		-	20	10

The examination and evaluation program has to be conducted regularly to enable judges and public defenders to be promoted as part of their professional career development. This is a way of recognising and valuing their good work so they can obtain promotion and remuneration befitting their experience and dedication. In addition, this can provide references for each institution to explore and develop

⁹ Duarte Tilman Soares previously performed the function of judge administrator of the Dili District Court and Jacinta Correia da Costa previously was a judge at the Dili District Court.

training strategies or capacity building options for those that need to improve their productivity.

JSMP has observed that whilst training has taken place for many years, examinations have not been carried out regularly, because there has not been sufficient planning and also due to limited resources, as well as the excessive work demands that do not match the available resources. This undermines the work performance of court actors because there is no mechanism to assess their progress and correct the deficiencies and weaknesses that exist in the justice sector. It is hoped that this evaluation will motivate court actors to work better in the future.

APPOINTMENT OF COORDINATOR TO THE PUBLIC DEFENDER-GENERAL AND HIS DEPUTY

On 24 August 2018 the Prime Minister, Taur Matan Ruak, swore in Cancio Xavier as the Public Defender-General to replace the outgoing Public Defender-General Sergio da Costa Hornai, who officially held this position for two mandates between 2010-2018. Previously, Mr. Hornai assumed the position of "Coordinator of Public Defenders" from 2000/2001 in accordance with UNTAET Regulation No. 24/2001 which was superseded by Decree-Law No. 38/2008 on the Statute of the Office of the Public Defender.

This appointment is based on the outcome of a meeting of the Public Defenders' Council which presented three candidates to the Prime Minister, and in the end it was decided to appoint Cândia Xavier as the Public Defender-General.

Also, on 26 October 2018, the current (at the time of writing) Minister of Justice, Manuel Carcéres, appointed Olga Barreto to the position of Deputy Public Defender-General. This is the first time someone has been appointed to the position of deputy since the Office of the Public Defender was established.

JSMP praises these appointments because the new Public Defender-General and his deputy can further improve the work of the Office of the Public Defender to guarantee and ensure assistance for the vulnerable because this is the main function of the Office of the Public Defender. JSMP also hopes that under the leadership of the newly appointed Cândia Xavier this office will be able to respond to concerns and criticism regarding the performance of the Office of the Public Defender to date because public defenders have not met their institutional obligations as set out in the Statute of the Office of the Public Defender to ensure free legal aid to the vulnerable.

CHANGES TO THE LEGAL AND JUDICIAL TRAINING CENTRE¹⁰

On 9 March 2018, the then Minister of Justice, Maria Angela Carrascalão, appointed the Honourable Judge Antonino Gonçalves to the position of Director of the Legal and Judicial Training Centre for three years from 2018 until 2020. Antonino Gonçalves replaced Marcelina Tilman who was the Director of the Legal and Judicial Training Centre for many years.¹¹

This appointment was made pursuant to Article 6 of Ministerial Diploma No. 43/2016, dated 27 July 2016, about senior management and middle management positions¹² which states that such a position may be filled by a magistrate, public defender, university professor or another individual whose knowledge in legal and judicial matters is widely acknowledged.

JSMP hopes that through the leadership provided by court actors, judges can change the curriculum at the training centre due to the problems and shortcomings in the courts faced by court actors (judges, prosecutors, public defenders/private lawyers).

Since these substitutions some changes then occurred later in 2018. In addition to providing complementary training to that already taking place in the judicial institutions, the Legal and Judicial Training Centre also receives requests from any institution that requires training. Another change relates to training for court actors, namely judges, prosecutors and public defenders, which must be carried out through the Legal and Judicial Training Centre. This mechanism is aimed at standardising materials, upholding quality and avoiding the situation where each institution implements training without any coordination with other institutions.

Also, some training has taken place overseas, and also complementary training about Portuguese legal language which was attended with enthusiasm by judges, prosecutors and court clerks. Training on land rights and on ethics and deontology was also provided for judges.

There are three trainers at the Legal and Judicial Training Centre from Portugal (one

¹⁰ Interview with the Director of the Legal and Judicial Training Centre, Antonino Gonçalves, on 7 February 2019, at the Legal and Judicial Training Centre.

¹¹ Marcelina Tilman da Silva now performs the function of Director General at the Ministry of Justice.

¹² Article 6 about senior management and middle management positions states that a Director will manage the Legal And Judicial Training Centre, who will be appointed by the Ministry of Justice, via a general proposal from the council, and will select a magistrate, public defender, university professor or another individual whose knowledge in legal and judicial matters is widely acknowledged, for an appointment of 3 years, that can be extended once for the same period of time.

woman and two men). Two trainers provide training to the judges and the other trainer provides training to private lawyers. There are five trainers who provide Portuguese language training (two women and three men) who are all from Portugal.

According to the existing plan, in 2019 the Legal and Judicial Training Centre will be even more active in providing complementary training to court actors including materials on maritime rights, mediation and arbitration involving all judicial institutions. The Legal and Judicial Training Centre will also recruit a trainer in the field of psychology (in relation to cases involving women and children and a psychiatrist for those suffering mental illness). JSMP really appreciates this plan and hopes that the Legal and Judicial Training Centre will have a specific trainer for the aforementioned area.

In addition, there is also another plan being discussed regarding the recruitment of an international trainer for prosecutors, an international trainer to provide training to court clerks and to extend the training period to 3 years starting with studies and then on the job training. This is because the Director of the Legal and Judicial Training Centre believes that two years is not enough for the participants to gain a good understanding of the materials.

2.1 RESOURCES IN THE JUSTICE SECTOR

BUDGET

In 2018 the budget approved for the Timor-Leste justice sector was US\$21,862,000 which was a 25% reduction from 2017. From this budget the Ministry of Justice received US\$16,294,000 (a reduction of 22%), and the Office of the Public Defender received US\$1,530,000 (a reduction of 16%) and the Legal and Judicial Training Centre received \$177,000 (a reduction of 21.3%). The courts received US\$ 2,974,000 (a reduction of 31.6%), meanwhile the budget for the district courts was US\$ 363,000 or a reduction of 52.2%. Meanwhile, the Office of the Prosecutor General including the district prosecutors received US\$ 2,594,000 (a reduction of 37%). Meanwhile, the budget for the relevant directorates in the justice sector is shown in the table below.

Table 3 : The State Budget for the justice sector in 2018 in comparison with 2017

Institution	2017 State Budget (duodecimal)	2018 State Budget (duodecimal)	Variation	Percentage (%)
Ministry of Justice	US\$ 20,998,000	US\$ 16,294,000	(reduction) US\$ 4,704,000	(-) 22%
Courts	US\$ 4,353,000	US\$ 2,974,000	(reduction) US\$ 1,379,000	(-) 31.6%

Public Prosecution Service	US\$ 4,128,000	US\$ 2,594,000	(reduction) US\$ 1,534,000	(-) 37%
Office of the Public Defender	US\$ 1,838,000	US\$ 1,530,000	(reduction) US\$ 308,000	(-) 16.7%
The Legal and Judicial Training Centre	US\$ 225,000	US\$ 177,000	(reduction) US\$ 48,000	(-) 21.3%

OVERVIEW OF THE 2018 STATE BUDGET FOR THE JUSTICE SECTOR AND ITS IMPLEMENTATION

The reduction of the budget for the justice sector occurred because of the political impasse between 2017 and 2018 as only a duodecimal budget was used. This situation has had a massive impact on the functioning of the State including the justice sector because judicial actors have a tremendous workload with limited resources. The table below describes the budget for the justice sector including budget implementation for each institution:

Table 4 : Overview of the 2018 State Budget for the Ministry of Justice

Institution	2017 State Budget (duodecimal)	2018 State Budget (duodecimal)	Variation	Percentage (%)
Office of the Ministry of Justice (\$'000)	US\$ 120,000	US\$ 392,000	(increase) US\$ 272,000	(+) 69.30%
Office of the Vice Minister of Justice (\$'000)	(-) does not yet exist	US\$ 98,000	(increase) US\$ 98,000	(+) 100%
Office of the Secretary of State for Land and Property	US\$ 103,000	US\$ 167,000	(increase) US\$64,000	(+) 38.32%
Directorate General	US\$ 190,000	US\$ 2,148,000	(increase) US\$1,958,000	(+) 91%
Office of Inspection and	US\$ 167,000	US\$ 121,000	(reduction) US\$ 46,000	(-) 27%

Audit				
National Office of Administration and Finance	US\$ 10,947,000	US\$ 6,787,000	(reduction) US\$ 4,160,000	(-) 38%
National Directorate of Legal Assistance and Legislation	US\$ 160,000	US\$ 126,000	(reduction) US\$ 34,000	(-) 21.25%
National Directorate for Human Rights and Citizenship	US\$ 161,000	US\$ 132,000	(reduction) US\$ 29,000	(-) 18%
National Directorate for Registry and Notary Services	US\$ 3,771,000	US\$ 1,654,000	(reduction) US\$ 2,117,000	(-) 56.13%
National Directorate for Prison Services and Social Reintegration	US\$ 2,196,000	US\$ 2,064,000	(reduction) US\$ 132,000	(-) 6%
The Legal and Judicial Training Centre	US\$ 225,000	US\$ 177,000	(reduction) US\$ 48,000	(-) 21.3%
Office of the Public Defender	US\$ 1,838,000	US\$ 1,530,000	(reduction) US\$ 308,000	(-) 16.7%
National Directorate for Land Property and Cadastral Services	US\$ 1,119,000	US\$ 899,000	(reduction) US\$ 220,000	(-) 19.6 %

Based on the table above, the Ministry of Justice has had to cancel many priority programs or execute them in a limited fashion. The programs that were executed included administration services, the national cadastral system project (land surveys and displacement to provide mediation for land disputes across the territory)¹³, the construction of buildings for the Office of the Public Defender in Ermera District and Bobonaro District, facilitating mobile trials, and printing electronic passports. There was also a significant reduction in areas such as fuel for prison transport to facilitate the movements of prisoners to and from the courts as well as food for prisoners and

¹³ The tables showing the State Budget for 2018 and 2017 were confirmed by Mr. Isolino Marques, Head of the Department of Planning and Budget, Ministry of Justice, in March 2019

some things that were not included in the budget such as acquisitions for purchasing vehicles for operational services.

The increase (+) given to the Office of the Vice-Minister only occurred in 2018 because previously in 2017 there was no Office of the Vice-Minister.

Also, the increases for the Office of the Minister of Justice and the Office of the Secretary of State for the Directorate of Land and Property should not have occurred and the 2017 budget should have been maintained. Unfortunately, due to technical failures in the system, there was duplication of budget items for staff salaries and these increases will be given back to the State. Also, the increase to the Directorate General should have been allocated to the National Office of Administration and Finance to guarantee the implementation of the National Cadastral System Program.

Table 5 : Overview of the 2018 State Budget for the Courts

Institution	2017 State Budget (duodecimal)	2018 State Budget (duodecimal)	Variation	Percentage (%)
Superior Council of Judicial Magistrates	US\$ 38,000	US\$ 508,000	(increase) US\$ 470,000	(+) 92.51%
Court of Appeal	US\$ 3,592,000	US\$ 2,106,000	(reduction) US\$ 1,486,000	(-) 41.3%
District courts	US\$ 723,000	US\$ 360,000	(reduction) US\$ 363,000	(-) 50.2%

The table above shows that the budget for courts was distributed amongst the internal organisations of the courts such as the Superior Council for Judicial Magistrates, the Court of Appeal and the district courts. The Court of Appeal received a budget of US\$2,106,000 or a reduction of 41.3% from 2017 and the district courts received a budget of US\$360,000¹⁴ or a reduction of approximately 50.2% from 2017 which was allocated to the four jurisdictions: the Dili, Baucau, Oecusse and Suai District Courts.

The table above also indicates an increase (+) in budget for the Council of Judicial Magistrates, because of a technical error with the transfer. Funds of more than US\$ 400,000 should have been allocated to the Court of Appeal, but they were allocated to the Council of Judicial Magistrates. However, the court has continued to use these funds based on an initial proposal made to administration services, even though limitations continue to exist.

¹⁴ Page 509, Book 4B of the 2018 budget.

The reduced budget for the courts has serious implications for meeting the daily requirements and urgent needs such as the maintenance of facilities at the courts, for example the management of toilets, fuel for operational vehicles, laptops for judges and computers for court clerks, and office supplies.¹⁵ For example, air conditioners and fans that have been installed in the main court room of the Dili District Court have not been working properly for many years and they are very noisy and those attending hearings have difficulty hearing what is said by judicial actors and participants in trial proceedings. The district courts and offices have similar problems. Also, sometimes judges and court officials in other district courts have used their own money to buy fuel for vehicles to facilitate deliberations on release warrants for prisoners who have served their sentences.

The Court of Appeal cannot deal with all of these limitations, because during 2017 and 2018 the Court of Appeal was only able to rely on a duodecimal budget as the result of the political impasse.¹⁶

JSMP also observed that some circumstances have remained the same in all of the courts, namely that there are no separate rooms for victims and witnesses, even though Law No. 2/2009 on Witness Protection came into force approximately ten years ago.

JSMP believes that the courts should have presented these circumstances during the debate on the State Budget, especially regarding the challenges they have faced for a number of years, because these circumstances have had a serious effect on the work of the courts in providing and guaranteeing justice for all citizens.

Table 6 : Overview of the 2018 State Budget for the Public Prosecution Service

Institution	2017 State Budget (duodecimal)	2018 State Budget (duodecimal)	Variation	Percent age (%)
Office of the Prosecutor General	US\$ 2,938,000	US\$ 1,856,000	(-) US\$ 1,082,000	-36.8%
Baucau District Prosecution Service	US\$ 503,000	US\$ 293,000	(-) US\$ 210,000	-41.7%
Suai District Prosecution Service	US\$ 381,000	US\$ 249,000	(-) US\$ 132,000	-34.6%

¹⁵ Based on JSMP observations and confirmation from Jose Maria de Araújo, Judge Administrator from the Dili District Court

¹⁶ Interview with Mr. Jaime Tilman as the Director of Finance at the Court of Appeal.

Oecusse District Prosecution Service	US\$ 306,000	US\$ 195,000	(-) US\$ 111,000	-36.27%
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The table above shows that the budget for the Public Prosecution Service has been reduced for nearly all directorates. According to the detailed description of the 2018 budget,¹⁷ funds have been reduced for development capital and there is no money for minor capital including the purchase of vehicles, IT equipment, communications equipment, furniture, and office equipment. Also, even though the budget for the goods and services category was increased, items such as local travel and professional training were reduced in comparison with the 2017 budget.

COURT ACTORS

In 2018 the judicial actors comprised 414 judicial magistrates, public defenders, court clerks, translators and administrative staff. This is an increase from 2017, when the total was 402 judicial actors and staff. Also, in 2018 there were deployments or appointments, and a dismissal. Also, one judge passed away at the start of 2018.¹⁸

In 2018 two judges from the district courts (1 woman and 1 man) were promoted to the position of appeal judge at the Court of Appeal. In addition, one judge was appointed to the position of Director General at the Legal and Judicial Training Centre. In 2018 one judicial magistrate was dismissed from his position as a prosecutor.

JSMP also noted that in 2018 the Legal and Judicial Training Centre produced 13 judicial magistrates and public defenders (3 judges, 5 prosecutors and 5 public defenders). These 13 participants reached the practical stage before entering into their period of probation in 2019. In relation to the reintroduction of the Legal and Judicial Training Centre, previously JSMP recommend for the Ministry of Justice to continue reactivating the learning process to respond to human resource problems in the judicial institutions. JSMP hopes that an increase in the number of actors at these three judicial institutions will respond to problems with human resources, both in terms of quality as well as quantity.

¹⁷ Pájina 510 Livru 4B, OJE 2018

¹⁸ Constancio Basmery passed away on 17 February 2018 due to an illness.

Table 7 : Number of judicial actors in 2018

	Judicial Magistrates		Agents of the Office of the Public Defender	Total
	Judges/Courts	Public Prosecution Service		
Judges/Prosecutors/Public Defenders	35 ¹⁹	34 ²⁰	35	104
Court Clerks	56	78	32	166
Translators	13	3	1	17
Administration Staff	73	34	20	127
Total	177	149	88	414

Based on observations made by JSMP as well as a conversation with a prosecutor, it appears that the prosecutors do not have enough court clerks because each court clerk has to attend to the work of three prosecutors. In addition to the heavy work load placed on the court clerks, this also affects the quality of services provided in each case. JSMP recommends for the Public Prosecution Service to recruit more court clerks to support the work of prosecutors to speed up the processing of cases registered at the Public Prosecution Service.

JSMP also observed problems with language, and translators continue to be required and the courts do not yet have any mechanisms to solve this problem. Therefore JSMP requests for the number of interpreters to be increased to service the courts, the Public Prosecution Service and Office of the Public Defender and to design regular training programs, especially on legal terminology. Also, as outlined in this JSMP report in the section on language, it is necessary to recruit interpreters who speak regional languages, especially within the jurisdiction of the Baucau District Court.

Recommendations

1. JSMP recommends for the Public Prosecution Service to recruit more court clerks to support the work of prosecutors to speed up the processing of cases registered at the Public Prosecution Service.
2. Provide training to increase the knowledge and understanding of interpreters regarding legal terminology, both interpreters who speak the official languages

¹⁹ This includes 3 practicing judges and the loss of one judge who went to the Legal and Judicial Training Centre as the director.

²⁰ This includes 5 practicing prosecutors and the loss of one prosecutor who was dismissed.

and regional languages.

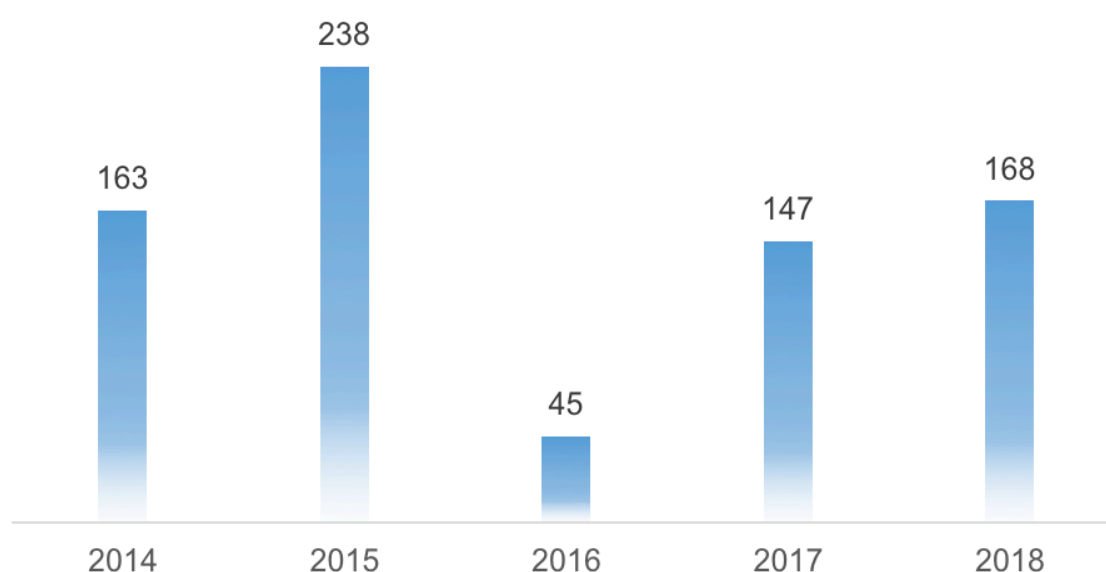
1.3 MOBILE COURTS

Since 2010 the mobile court program has been funded by UNDP and the mobile court program has been an alternative means to provide justice for the people. JSMP believes that this is a creative approach that reflects the real circumstances because the courts are located in just four municipalities across the entire territory. Therefore, this program enables remote communities or those in rural areas to access formal justice that is often difficult and expensive.

In reality the mobile courts are held in three court jurisdictions: the Dili District Court which covers the five districts of Dili, Ermera, Aileu, Liquica and Atauro; the Baucau District Court which covers the four districts of Baucau, Manatutu, Viqueque and Lospalos; and the Suai District Court which covers the four districts of Suai, Bobonaro, Ainaro and Same.

In 2018 JSMP monitored 168 case cases before the mobile courts. These cases do not represent all of the cases heard by the mobile courts in 2018. JSMP is unable to monitor all cases heard by the mobile courts because of JSMP's limited resources and other commitments.

Graph 3: Total cases heard by the mobile courts as monitored by JSMP between 2014 and 2018 based on jurisdiction



JSMP observed that the mobile courts provide coverage in rural areas and enable communities to feel that formal justice truly exists in Timor-Leste. JSMP appreciates

this program; however, JSMP is concerned with the timing of trials conducted by the mobile courts. Based on JSMP observations, the mobile court in Ermera District tried three cases involving simple offence against physical integrity, two cases of domestic violence and one case of simple offences against physical integrity and the trials started at 5:30pm and finished at 11.30pm.

These trial hearings started late and finished close to midnight, and obviously this is neither effective nor efficient, and this can have an impact on the security of the parties because they need to travel to their homes that are in remote areas. There are also other concerns about the quality of these proceedings.

In addition to the time management of the trials, the mobile courts continue to use places that are insecure and inappropriate. In many cases the mobile courts conducted trials in the meeting room of the police station, the meeting room of the district Public Prosecution Service and at the municipal administration office. This leads to concerns about the perceived impartiality of proceedings. Based on JSMP observations some meeting rooms are in poor condition and have very limited space to allow the public to access trials that are open to the public. There are also still concerns about the kinds of cases being heard in the mobile courts, particularly domestic violence cases and cases involving minors.

Recommendations

3. Recommend for the mobile courts not to conduct trials until late at night. Ensure the quality of proceedings, rather than the quantity.
4. 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.

1.4 ACCESSIBILITY OF TRIALS AT THE COURT OF APPEAL

As cited by JSMP in its 2017 Annual Report, in 2018 JSMP also raised the issue of accessibility of trials at the Court of Appeal. JSMP observed that most trials or rehearing of evidence before the Court of Appeal still did not allow public access like that provided by courts of first instance. Most rulings were announced via written notification and these cases were examined via deliberation pursuant to Article 306 of the Criminal Procedure Code. Trials before the Court of Appeal were completely closed to the public, without access to the public or the parties (appellant and respondent) as parties involved in this process.

JSMP believes that in order to ensure that all people can properly understand proceedings and to ensure that all people can accept the results of these proceedings, the Court of Appeal should ensure that hearings to announce its rulings

are open to the public. This will help the parties to receive information that is clearer and more credible relating to the decisions and considerations of the court in each case.

This was outlined by JSMP in its previous report on the fundamental reasons why JSMP believes it is important to conduct trial hearings that are open to the public. Firstly, to comply with obligations set out in the law, secondly to ensure that the appellant and respondent understand the reasons why they won or lost, thirdly, to promote the transparency and accountability of judicial decisions, and fourthly, decisions in all cases use Portuguese which automatically makes it difficult for applicants or respondents and the general public to understand these decisions.

In 2018 the Court of Appeal registered 216 new criminal cases and 30 new civil cases. Meanwhile, there were 111 criminal cases pending from 2017 and 33 civil cases. From this total of 327 criminal cases (pending appeals and new appeals), the Court of Appeal managed to finalise 160 cases and also 16 civil cases from a total of 46 cases (pending and new). Therefore, in 2018 the Court of Appeal managed to decide 176 cases.

Recommendations

5. Request for the Court of Appeal to hold hearings to announce a decision or when re-examining evidence, so the parties can properly understand their case.
6. JSMP recommends that in the future the Court of Appeal needs to listen to the parties when re-examining evidence so that the parties completely understand proceedings in their case and can find out and receive correct information about the reasons their case was successful or unsuccessful.

1.5 LANGUAGE

In 2018 JSMP continued to note problems with language at the courts, and the jurisdiction with the most problems was the Baucau District Court. Problems occurred in the jurisdiction of Dili in cases involving foreigners who did not understand the official languages (Portuguese and Tetum), and the court needed to adjourn these trials to find an interpreter, based on the requirements of each case.

For example, JSMP observed a case of aggravated larceny registered as Case No. 0046/17. ERSIC,²¹ involving a Chinese company that was the victim in this matter

²¹ Information on cases is provided in the JSMP case summary for June 2018 at <http://jsmp.tl/wp-content/uploads/Sumariu-Kazu-TDD-Ju%C3%B1u-2018.pdf>;

and the individuals involved did not understand the official languages of Timor-Leste. In this case the Dili District Court had to adjourn the trial process to give time to the court to find a Chinese interpreter. This was not a major problem because an interpreter was quickly located, but JSMP is concerned about this interpreter's knowledge regarding legal terminology, because the interpreter is not an official interpreter who has been trained to provide court interpreting.

JSMP believes that the court needs to coordinate this issue with the Ministry of Justice to compile a list of languages that are often required at the court and explore the appropriate measures to solve these problems to assist the court when necessary in the future. Those people called on by the court to provide interpreting who are non-official interpreters for a particular language should receive some basic training about legal terminology.

In addition, the courts also faced problems with local languages. Similar to 2017, in 2018 JSMP discovered that in the jurisdiction of the Baucau District Court the police authorities and court clerks provided interpreting into the local languages during trials. The table below indicates the cases where non-official interpreters were used:

Table 8 : Non-official interpreters used in cases before the Baucau District Court (mobile trials)

Date	Interpreter	Language	Case Type	District of the Mobile Court
27 March 2018	Investigative police	Tetum-Galolen	Mistreatment of a spouse	Manatuto
1 October 2018	Court Clerk	Tetum-Makasae	Simple offences against physical integrity – DV	Viqueque
2 October 2018	Police	Tetum-Tetum Terik	Simple offences against physical integrity – DV	Viqueque
2 October 2018	Court Clerk	Tetum-Naoeti	Simple offences against physical integrity – DV	Viqueque

JSMP is grateful that the courts are endeavouring to obtain interpreters for local languages because the courts still do not have official interpreters for local languages. However, as stated by JSMP its previous report, these interpreters have not been trained to provide interpretation. Normally the courts are able to manage by

using court clerks and police, but this has the potential to create a conflict of interest. When a police officer or court clerk is used as an interpreter it can affect the credibility and the quality of justice provided in the proceeding.

JSMP has requested for the Court of Appeal to consider this issue to recruit more interpreters for local languages because there is an increasing number of cases being heard at the courts involving parties who do not understand the official languages.

Recommendations

7. Request for the court to increase the knowledge of interpreters about legal terminology, in Tetum, Portuguese and other languages
8. Compile a list of non-official interpreters to assist the court when a need arises, and also provide them with basic training on legal terminology.

2. GENDER EQUALITY

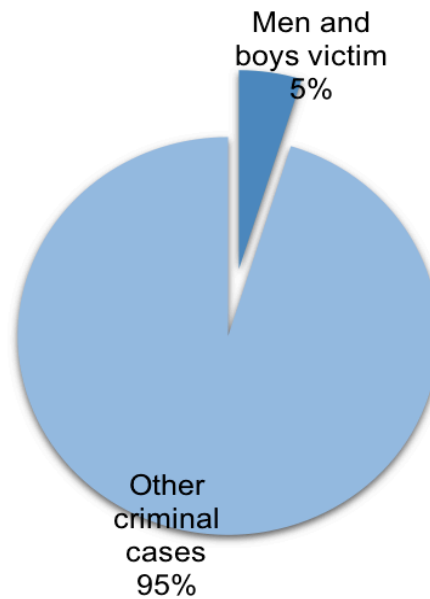
2.1 CASES INVOLVING GENDER-BASED VIOLENCE

In 2018 JSMP monitored and analysed 702 cases involving gender-based violence, with 652 cases involving gender-based violence committed against women and girls and 50 cases committed against men and boys. These cases made up 67.8 percent of a total number of 1,036 criminal cases monitored by JSMP in 2018. These statistics show that there are still many cases involving gender-based violence at the courts, and most often these crimes are committed against women and children (63%) in comparison with men and boys (only 5%). The graph below shows the difference between the number of women and girls who suffer these crimes in comparison with men and boys.

Graph 4: Cases of gender-based violence committed against women and girls in comparison with other criminal cases monitored by JSMP in 2018



Graph 5: Cases of gender-based violence committed against men and boys in comparison with other criminal cases monitored by JSMP in 2018

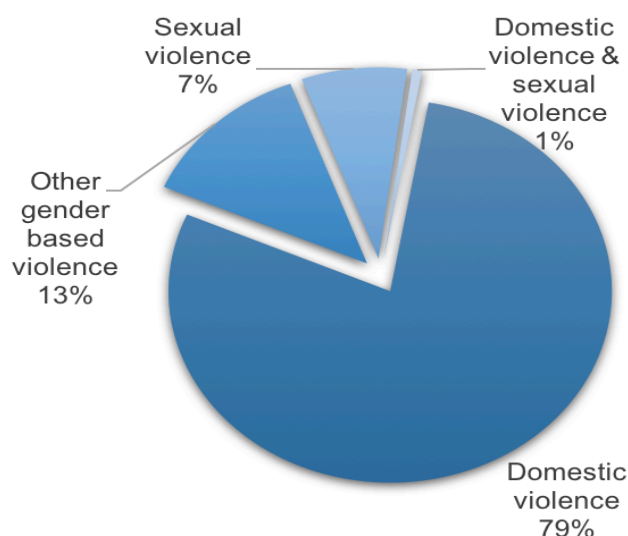


In addition, the graph below shows that 79% of cases involving gender-based violence committed against women and girls were categorised as domestic violence. Meanwhile 7% involved rape, 1% involved rape characterized as domestic violence and 13% involved another type of gender-based violence.

In addition, 60% of the crimes committed against men and boys involved domestic violence, 2% involved rape and 38% involved another type of crime.

These statistics show that women and girls continue to be victims in cases of domestic violence and sexual violence. This shows that the State and relevant institutions have failed to protect women and girls against all forms of violence, so women and girls do not feel safe in their own homes.

Graph 6: Gender-based violence against women and girls monitored by JSMP in 2018



2.1 CASES OF DOMESTIC VIOLENCE

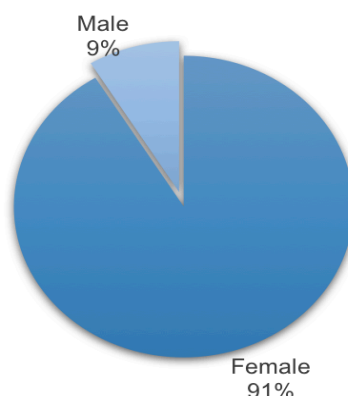
STATISTICS ON CASES OF DOMESTIC VIOLENCE

In 2018 JSMP monitored 554 cases characterized as domestic violence (DV). Similar to previous years, in 2018 JSMP continued to observe that in some cases of domestic violence the prosecutor and the court did not process the matter in accordance with the Criminal Procedure Code. In many cases the prosecutor did not select the appropriate charges based on the seriousness of the crime because they selected the wrong article, and therefore did not provide the court with the option to apply an appropriate punishment.

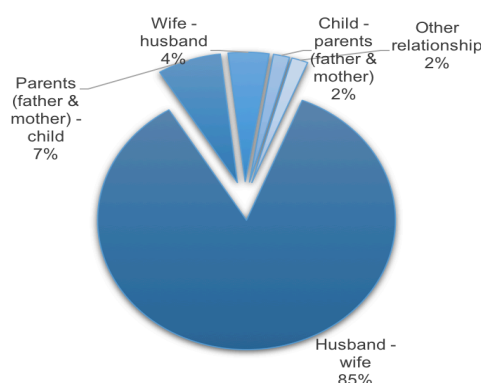
JSMP monitoring indicated that most cases of domestic violence involved male defendants rather than female defendants. The graph below proves that most cases categorised as domestic violence that were monitored by JSMP during 2018, or 91% of cases, involved female victims, and only 9% involved male victims.

Also, in 85% of these cases the husband was the defendant who committed the offence against his wife. This shows that in reality most victims are wives who are vulnerable in their day to day life and within their family sphere. The graph below clearly illustrates this reality:

Graph 7 : Cases characterized as domestic violence showing the sex of the victim



Graph 8: Cases characterized as domestic violence based on the relationship between the defendant and the victim



In 2018 JSMP managed to monitor 485 cases involving violence domestic categorised as simple offences against physical integrity and this crime is more prevalent than other crimes. This is an increase from the 345 cases monitored in 2017. Next, there were 48 cases involving the mistreatment of a spouse, which is an increase from the 39 cases monitored in 2017.

JSMP also monitored 7 cases of simple offences against physical integrity and threats and 3 cases of simple offences against physical integrity and property damage. Even though the case involving property damage and threats was committed by a husband against his wife, these types of crimes are not included in Article 35 of the Law Against Domestic Violence, as a public crime, so this crime is not categorised as domestic violence.

According to the law, for semi-public crimes the court may ask the defendant and the victim to attempt conciliation. When a victim and defendant agree to reconcile and the two parties have agreed not to pursue the case, the court simply endorses this agreement. In addition to the crimes of threats and property damage, other crimes identified were aggravated property damage, property damage with violence and failure to provide food assistance. In practice although these crimes have occurred within the family sphere and involve a wife and a husband, they are not considered to be crimes of domestic violence. Therefore, since 2016 JSMP and ALFeLa have continued to advocate for these crimes to be included in the Law Against Domestic Violence.

Table 9 : Cases characterized as domestic violence monitored by JSMP during 2018

Case type	Article(s)	Number of cases
Simples offences against physical integrity characterised as domestic violence	Article 145 PC & Article 35 LADV	485
Mistreatment of a spouse	Article 154 PC	48
Simples offences against physical integrity characterised as domestic violence & threats	Article 145 PC & Article 35 LADV & Article 157 PC	7
Mistreatment of a minor	Article 155 PC	5
Simples offences against physical integrity characterised as domestic violence & property damage	Article 145 PC & Article 35 LADV & Article 258 PC	3
Aggravated homicide characterised as domestic violence	Article 139 PC & Article 35 LADV	2
Simples offences against physical integrity characterised as domestic violence & property damage & larceny & threats	Article 145 PC & Article 35 LADV & Article 258 & 251 & 157 PC	1
Mistreatment of a spouse & threats	Article 154 & 157 PC	1
Serious offences against physical integrity characterised as domestic violence	Article 146 PC & Article 35 LADV	1
Simples offences against physical integrity characterised as domestic violence & obstructing public authority	Article 145 PC & Article 35 LADV & Article 243 PC	1
Total		554

Inconsistencies in the selection of articles in cases of domestic violence

In 2018 JSMP observed that in some cases involving domestic violence the prosecutors continued to use simple offences against physical integrity even though these crimes endangered the life of the victims. For example, in the case study below the victim's life was endangered.

Article 42 of the Penal Code (PC) provides clear options for preparing charges when one or more offences is applicable to a crime. The rules are that the specific provision shall apply with prejudice to the general provision; the main provision takes precedence over the subsidiary provision; and the broadest and most complex provision shall be applied.

Pursuant to the aforementioned Article 42 of the Penal Code, certain crimes characterized as domestic violence should actually be charged as mistreatment of a spouse (Article 154 of the PC) and not simple offences against physical integrity (Article 145 of the PC).

As JSMP has emphasised on many occasions, 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. Also, JSMP believes that in cases where the life of the victim has been endangered, because the defendant has used a bladed weapon such as a machete or knife, axe or crow bar, the defendant should be charged with attempted homicide. Alternatively, the prosecutor could apply the charge of serious offences against physical integrity rather than simple offences against physical integrity.

There were some small changes that can be considered as a step forward because in some cases (although only a very small number) prosecutors charged defendants with Article 154 of the Penal Code. This means that prosecutors are aware that Article 154 of the PC is the more specific article in cases of domestic violence. However, this has been inconsistent, which has created a lot of confusion in practice about which article is more relevant in cases of domestic violence.

JSMP believes that when a prosecutor selects the correct or appropriate article this will provide the court with the option of applying an appropriate penalty in each case.

The following two cases studies show that prosecutors do not select charges based on the seriousness of the case which has resulted in unsatisfactory decisions.

Case study

1. Simple offences against physical integrity characterized as domestic violence²²

The prosecutor alleged that on 11 June 2017, at 8.30pm, the defendant swore at the victim, took a stove²³ and struck the victim on the back of the neck and once on the side of her head, punched her once on her right shoulder and punched her once on the back of the head which caused the victim to fall to the ground. When the victim tried to flee, the defendant grabbed her by the hair and squeezed her neck and dragged her inside the house. The defendant then threw the victim on the bed, punched the victim twice on each side of her head, punched the victim once in the back and caused the victim to fall to the ground and the defendant stood on the victim's back.

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), 35 (b) and 36 of the Law Against Domestic Violence.

During the trial the defendant confessed that he committed these acts and confirmed that the victim stayed in a shelter for seven months. In addition, the victim maintained and confirmed the facts set out in the indictment.

The public prosecutor requested for the court to impose a prison sentence of 6 months, suspended for 1 year, against the defendant. The public defender requested for the court to apply a more lenient sentence against the defendant with consideration of the mitigating circumstances.

The court found the defendant guilty of committing the crime based on the facts set out in the indictment of the prosecutor and sentenced the defendant to six months in prison, suspended for one year, and ordered him to pay court costs of US\$25.00 based on the request of the prosecutor in his final recommendations.

JSMP is very concerned with the Prosecutor's reasoning in this case as well as the court's decision. The prosecutor did not clarify or provide thorough analysis about the defendant's behaviour. The acts of the defendant against the victim were not simple offences against physical integrity. Therefore, Article 145 of the Penal Code is

²² Case No. 0007/16.MFSIC. JSMP's analysis on this position is available in a Press Release entitled: the Public Prosecution Service needs to select appropriate provisions to charge defendants in cases of domestic violence based on the severity of the crime http://jsmp.tl/wp-content/uploads/PrJSMPPhusuMPakuzakrimeVDtuirgravidadekazu_TETUM.pdf

²³ In Timor-Leste, people cook with a small stove that can be put over the fireplace.

not relevant in this case. The prosecutor should have understood and been aware that this assault was continuous and brutal, and constituted serious acts that could have caused damage to the victim's physical and emotional health.

The defendant committed this crime in a number of ways. The defendant committed the physical assault with the use of a heavy object by striking the victim on the back of the head with a stove which caused the victim to fall to the ground. The defendant also squeezed the victim's neck and stood on the victim when she fell to the ground and the defendant also swore at the victim very badly. The most relevant article in this case was Article 154 of the Penal Code²⁴ on mistreatment of a spouse because this is more specific, and Article 42 of the Penal Code provides clear guidance about this.

JSMP believes that the sentence of six months in prison suspended for one year applied by the court against the defendant is not proportional with the defendant's behaviour and will not educate the defendant to refrain from such acts in the future and will not educate the community in general. The lenient sentences imposed in most cases of domestic violence can strengthen the perception and belief in the community that domestic violence is not a serious crime and this will encourage defendants and other potential perpetrators to commit even more crimes of domestic violence in the community.

Recommendations

9. JSMP requests for the prosecution and the courts to thoroughly analyse and consider the relevant facts and circumstances in such crimes and the potential consequences that could affect the entire circumstances of the victim
10. JSMP 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.

The next case study shows that the prosecutor failed to charge the matter appropriately even though the prosecutor knew that the defendant used a bladed weapon during the commission of the crime.

²⁴ Article 154 of the Penal Code (PC) on mistreatment of a spouse states that "Any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision".

2. Simple offences against physical integrity characterized as domestic violence

25

The prosecutor alleged that on 7 January 2018, at approximately 10 am, the defendant pulled the victim's hair and pushed her into the bedroom. The defendant threw the victim on the bed, sat on top of her and choked the victim. The defendant took a machete and tried to strike the victim but missed because the victim knocked the machete away.

The defendant took a piece of wood and struck the victim twice on her right leg which caused redness and pain. The victim jumped down from the bed and ran away but the defendant took a knife and tried to stab the victim but missed because the victim knocked the knife away. Also, the defendant choked the victim up against a wall and then took a machete and tried to strike the victim again but the victim knocked the machete away.

On 8 January 2018 at 6.30am, the defendant grabbed the victim by the throat and threw the victim on the ground and she lost consciousness. These acts caused the victim to suffer redness and pain to her neck and leg and the victim received treatment at PRADET and stayed at a shelter for three days.

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), 35 (b) and 36 of the Law Against Domestic Violence.

During the trial the defendant fully confessed to the facts and the victim maintained the facts set out in the indictment.

In his final recommendations the prosecutor maintained the charges and requested for the court to apply a suspended prison sentence against the defendant. Also, the defence requested for the defendant to be given a lenient suspended sentence.

The court concluded the matter and found the defendant guilty of committing the crime based on the facts set out in the indictment of the public prosecutor and sentenced the defendant to 3 months in prison, suspended for 1 year, and ordered the defendant to pay court costs of US\$ 10.

²⁵ Case No. 0010/18-DIBCR. JSMP analysis on his case is available in a press release entitled Prosecutors need to select appropriate provisions to charge defendants in cases of domestic violence based on the severity and the circumstances of the crime http://jsmp.tl/wp-content/uploads/PRSMPhusuMPuzaartiguapropriadu-antesformulaakuzasaun_TETUM-1.pdf

JSMP believes that the prosecutor failed to select the appropriate article to charge this crime which had great potential to threaten and seriously endanger the life of the victim because the defendant tried to kill the victim. It is clear that this was not a case of simple offences against physical integrity, based on an analysis of the actions carried out by the defendant and the object he used to attack the victim. The offences committed by the defendant constitute a serious crime and there is no doubt that his actions would damage the victim's physical and psychological health. The defendant also clearly demonstrated his strong intent to injure and inflict serious damage on the victim. Actually the prosecutor should have analysed how the victim's actions could have endangered the life of the defendant.

In addition, the defendant's act did not achieve the intended result (incomplete) or the crime was not consummated, not because the defendant conscientiously stopped himself from continuing these acts, but due to the victim's efforts to defend herself from the assault of the defendant.

JSMP believes that Article 23 and Article 138 on attempted homicide were the more relevant articles in this case. When the correct crime is charged the judges are able to impose a penalty that befits the seriousness of the crime, guarantee justice for the victim and protect the victim from this crime and educate the defendant that domestic violence is a serious crime.

JSMP recommends for prosecutors to assess the elements of crime and potential risks in each case based on thorough analysis before deciding on the type of crime and selecting the article to charge the defendant. JSMP also requests that before making a decision, courts should thoroughly analyse the case and the facts proven during the trial, in order to apply the most relevant and appropriate article befitting the seriousness of the case.

Recommendation

11. Prosecutors should proactively evaluate the facts produced during a trial and select the appropriate provisions in cases of domestic violence based on the seriousness and circumstance of each case to ensure that the sentence imposed in each case is proportional and reflective of the defendant's actions.

TRENDS IN SENTENCING IN CASES CHARACTERIZED AS DOMESTIC VIOLENCE

In 2018 the courts continued to apply more suspended sentences in cases of domestic violence, namely in 354 cases (64%) from a total of 554 cases of domestic

violence monitored by JSMP. Fines were applied in 79 cases (14%), and suspension of execution of a prison sentence and rules of conduct were applied in 33 cases (6%). Meanwhile, suspension of execution of a prison sentence with obligations were applied in 2 cases (1%) and suspension of execution of a prison sentence and civil compensation was applied in just 1 case (0%). The table below categorises the decisions imposed:

Table 10 : Decisions in cases characterized as domestic violence monitored by JSMP in 2018

Type of decision	Articles	Total	%
Suspension of execution of a prison sentence	Article 68 of the PC	354	64%
Fine	Article 67 of the PC	79	14%
Unknown		39	7%
Suspension of execution of a prison sentence with rules of conduct	Articles 68 & 70 (g) of the PC	33	6%
Penalty of admonishment	Article 82 of the PC	28	5%
Acquittal		11	2%
Prison sentence	Article 66 of the PC	6	1%
Suspended prison sentence with obligation	Article 69 of the PC	2	1%
Suspension of execution of a prison sentence and civil compensation	Article 68 of the PC	1	0%
Suspension of execution of a prison sentence & fine	Articles 68 & 67 of the PC	1	0%
Total		554	100%

In most cases the courts apply a suspended prison sentence

From the 554 cases involving domestic violence, in 354 cases (64%) the court applied a suspended sentence without rules of conduct or obligations. There are still more suspended sentence without rules of conduct and additional obligations in comparison with other sentences applied by the courts in cases of domestic violence. JSMP believes that in order to reduce the number of cases of domestic violence, and to deter defendants, the courts need to regularly apply additional obligations or rules of conduct together with suspended sentences.

Article 1 of the Law Against Domestic Violence states that the aim of establishing the Law Against Domestic Violence is to prevent domestic violence and also to promote

protection and assistance for victims.²⁶ The courts need to ensure that judicial decisions have a positive effect on victims and protect the common good of society.

If the courts continue to apply suspended sentences without obligations, this can send a message to defendants and society that domestic violence is not a serious crime. In addition, the application of suspended sentences without monitoring or supervision by the competent entities will not deter defendants from repeating their behaviour during the period of suspension.

The courts have not been effective in applying rules of conduct and other obligations as part of suspended prison sentences

JSMP is concerned with the effectiveness of rules of conduct. In 33 cases of domestic violence (6%) observed by JSMP in 2018 the court included rules of conduct in the suspended sentence imposed, and in 2 cases (1%) the court included obligations in the suspended sentence imposed.

JSMP monitoring indicated that the courts applied rules of conduct that required defendants to periodically appear before the courts for a specified period. In relation to other obligations imposed by the court, one defendant had to apologise to the victim in front of both families and in another case the defendant apologised to the victim in front of the local authorities and had to present evidence of this apology to the court.

Similar to previous reports, JSMP believes that sentences accompanied by rules of conduct or additional orders will ensure that defendants comply with court decisions imposed against them. Rules of conduct and additional obligations are a practical and simple means of supervising the convicted person and will deter defendants/convicted persons from repeating their behaviour in the future, especially in cases characterized as domestic violence. Therefore the courts need to evaluate and explore practical and appropriate means of ensuring that competent entities such as the local authorities can provide supervision to ensure effective penalties.

JSMP believes that the involvement of local authorities in suspended sentences is aimed at deterring the reoccurrence of crimes and for the community in general to understand the consequences of these crimes. The involvement of Village Chiefs is based on the competence given to them in the Law on Community Leaders.

Even though less suspended sentences with additional rules of conduct were applied in 2018, JSMP is happy because the Oecusse District Court starts to applied suspended sentences with rules of conduct and additional obligations in its decisions

²⁶ Article 1 of the Law Against Domestic Violence (LADV)

in three cases involving domestic violence.²⁷ In previous years the Oecusse District Court did not apply any rules of conduct or obligations in any cases. This progress is the result of JSMP advocacy, even though suspended sentence with obligations were only applied in a small number of cases.

JSMP suggests that the competent entities should effectively monitor the application of these additional rules. This is to guarantee the aim of the penalty which is to reduce crime in society, and to educate other people not to commit crimes in society, especially crimes of domestic violence.

Fines continue to be imposed in many cases involving domestic violence

Just like last year, JSMP remains concerned that the courts continued to apply fines in cases of domestic violence during 2018.

In 2018 the courts applied fines in 79 cases of domestic violence (14%) from a total of 554 cases involving domestic violence. This is an increase from 2017, where fines were applied in 41 cases. JSMP believes that the application of fines can cause financial difficulties for victims and children when victims and children continue to live with the convicted person.

Although a fine is one of the penalties provided for in the Penal Code, JSMP recommends for the courts to not consider fines as an appropriate penalty in cases involving domestic violence. As detailed above, fines cause financial difficulties for victims and children who are living together with the defendant and have no deterrent effect on defendants who have money. The defendant can immediately pay the fine on the same day that the sentence is imposed and after paying the fine the defendant has no further obligations. This can cause defendants and members of

²⁷ Information about rules of conduct is available in a JSMP press release at: http://jsmp.tl/wp-content/uploads/PrJSMPKongratulaTribunálAplikaRegraKonduta_TETUM-1.pdf Information about obligations is available in the JSMP case summary for May 2018 from the Oecusse District Court, registered as Case No. 0216/17.OESIC, at: http://jsmp.tl/wpcontent/uploads/SumariuKazuTribunálOECUSSE_TETUM-1.pdf and the Case Summary for June from the Oecusse District Court registered as Case No. 0161/17.OESIC, at: http://jsmp.tl/wp-content/uploads/SumariuKazuTribunálOekusi_TETUM.pdf

the community to perceive that money can resolve offences committed against women.

Recommendations

12. 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 to help the courts identify appropriate penalties and protection measures based on the principles of the Penal Code and the Law Against Domestic Violence.
13. The courts should apply rules of conduct in more cases and order convicted persons to report to local authorities such as the village chief to guarantee the aim of the sentence. 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.
14. If courts believe that a fine will impose a financial burden on the household, even though a fine is considered to be the best option, the courts need to fulfil the requirements set out in Article 38 of the Law Against Domestic Violence.

2.2 CASES OF RAPE

Studies show that many women and girls in Timor-Leste face gender-based violence, including rape, in their day to day lives. Women and girls are the victims of rape in most cases. Rape is a complex crime in terms of obtaining authentic proof in accordance with the requirements of the law because sometimes defendants use violence, threats and other means to achieve their objective. Also, rape can have serious psychological effects on victims and it is possible for victims to live with trauma for their entire lives. In some cases the victim is disabled, and this increases and multiplies the impact on the victims.

Even though JSMP monitoring shows that the courts continue to put the perpetrators of crimes characterized as sexual violence in prison, JSMP also observed that in many cases the prosecutors have failed to select the appropriate charge which has enabled the court to apply a lenient sentence, including cases involving disabled victims.

In some cases the courts have applied lenient sentences in certain cases with the consideration that the defendant and victim were involved in an intimate romantic relationship and in other cases due to the age of the defendant (the defendant was

very old). The courts have acquitted defendants from some cases because they believe that the victim gave consent when the alleged crime occurred because the victim did not react towards the defendant. In addition, JSMP observed that sentences continue to be inconsistent because civil compensation was ordered in some cases, and not in others.

JSMP understands that each judge enjoys the right to be independent in cases they are hearing based on the nature and complexity of the alleged crime. However, JSMP also believes that the application of uniform and consistent sentencing in crimes of a similar nature will have a positive effect on society because the defendant and society in general will learn from the sentence imposed by the court in each case. Uniform and consistent sentences will have more binding force and will encourage society to avoid these crimes.

JSMP requests for the courts to assess each case based on its complexity and the consequences and effect on the victim as a result of the defendant's behaviour. The application of civil compensation against defendants in addition to the main sentence educates defendants and society to avoid committing crimes in the future.

STATISTICS ON CASES OF RAPE

In 2018 JSMP monitored 60 cases of rape. This was an increase from the 32 cases monitored by JSMP in 2017. These 60 cases amounted to 9.2% of cases involving violence against women and girls, and 5.8% of 1036 criminal cases monitored by JSMP in 2018.

Table 11 : Cases involving rape monitored by JSMP in 2018

Case Type	Articles	Number of cases
Aggravated rape	Articles 172 and 173 of the Penal Code	7
Sexual abuse of a minor	Article 177.1 of the Penal Code	7
Rape	Article 172 of the PC	5
Sexual acts with an adolescent	Article 178 of the PC	5
Sexual coercion	Article 171 of the PC	4
Aggravated sexual abuse of a minor	Articles 177.1 & 182 of the PC	4
Attempted rape	Articles 23, 24 & 172 of the PC	3
Sexual abuse of a person incapable of resistance	Article 179 of the PC	2

Aggravated sexual abuse of a minor	Articles 177.2 & 182 of the PC	2
Sexual exhibitionism	Article 181 of the PC	2
Aggravated sexual coercion	Articles 171 and 173 of the Penal Code	2
Sexual abuse of a minor & simple offences against physical integrity characterized incest and domestic violence	Articles 177.2, 145 of the PC & Article 35 of the LADV	1
Aggravated sexual abuse of a minor, DV (incest)	Article 177.2 of the PC & Article 35 of the PC	1
Aggravated sexual abuse against a minor, (incest)	Articles 177.1 & 182 of the PC	1
Rape, termination of pregnancy and simple offences against physical integrity, DV (incest)	Articles 172, 141, 145 of the PC & Article 35 of the LADV	1
Sexual exploitation of a third party, abduction, rape and attempted homicide	Articles 174, 161, 172, 23 and 138 of the PC	1
Aggravated sexual abuse against a minor, DV (incest)	Articles 177.1, 182 of the PC & Article 35 of the LADV	1
Aggravated rape, DV (incest)	Articles 172 and 173 of the PC and Article 35 of the LADV	1
Attempted aggravated rape	Articles 23, 172, 173 of the PC	1
Sexual exploitation of a third party	Article 174 of the PC	1
Attempted rape	Articles 23 and 173 of the Penal Code	1
Attempt, punishability of attempt and aggravated sexual abuse of a minor	Articles 23, 24, 177.2 and 182 of the PC	1
Sexual abuse of a minor and continuous crime	Articles 177.1, 41 of the PC	1
Sexual abuse of a minor	Article 177.2 of the Penal Code	1
Child pornography and sexual acts with an adolescent	Articles 176 and 178 of the Penal Code	1
Sexual abuse of a minor, sexual acts with an adolescent and attempted termination of pregnancy	Articles 177, 178, 23, 141 of the PC	1
Sexual fraud	Article 180 of the PC	1

Attempted sexual coercion and rape	Articles 23, 171, 172 of the PC	1
Total		60

The table below shows the large number of cases (19) where the victim is a child of age unknown. In 12 cases the victim was aged over 17 years. 10 cases involved a victim aged between 14-16 and 10 cases involved a victim aged between 12-13. In addition, 9 cases involved a victim aged under the age of 12.

Table 12 : Cases involving rape monitored by JSMP in 2018 based on the age of the victim

Age of victim	Number
Unknown	19
Over years 17	12
14 - 16 years	10
12 - 13 years	10
Under years 12	9
Total	60

TRENDS IN SENTENCING FOR CASES INVOLVING SEXUAL VIOLENCE

JSMP has observed that the courts continue to send those convicted of committing crimes of rape to prison. However, JSMP has also observed that in most cases the courts do not order the defendant to pay civil compensation to the victim pursuant to Article 284 of the Criminal Procedure Code²⁸ and Article 69 of the Penal Code.²⁹ In recent years, (2016 – 2018), in cases involving rape the courts imposed a range of sentences on defendants, with a minimum sentence of 4 years and maximum sentence of 28 years.

In 2018, there were 25 cases where defendants in cases involving rape received a prison sentence. Of these 25 cases, only in 2 cases did the court ask the defendant

²⁸ Article 284 of the Criminal Procedure Code on deciding on a request for compensation states that a defendant can be ordered to pay compensation if a loss has occurred.

²⁹ Article 69 of the Penal Code on suspension of a prison sentence on condition that certain duties be performed requires a defendant to redress harm caused by a crime.

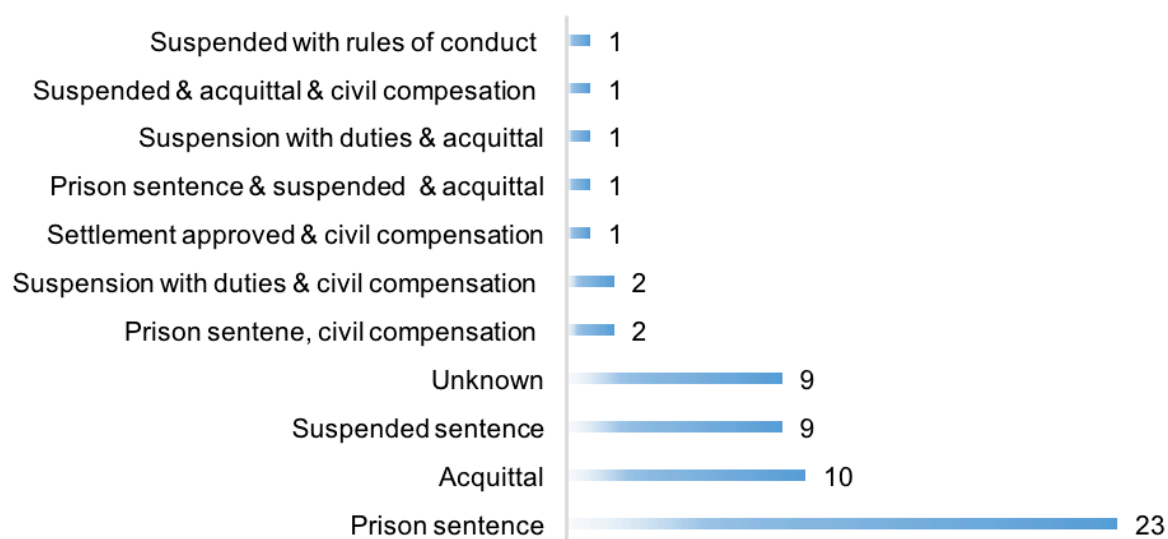
to pay civil compensation to the victim. JSMP believes that the application of civil compensation against defendants is a means to redress the victim's suffering and moral damage because the defendant's actions have a serious psychological impact on the victim, especially in cases involving victims with special needs such as disabled persons. The application of civil compensation against defendants in addition to the main sentence in specific cases will educate defendants and society to avoid committing crimes in the future.

During 2018 JSMP also observed two sexual violence cases involving a disabled victim. In these cases, there is an increased responsibility towards the victim who has a disability.

Table 13: Decisions in cases involving rape monitored by JSMP in 2018

Type of decision	Articles	Total	%
Prison sentence	Article 66 of the PC	23	38%
Acquittal	Article 68 of the PC	10	17%
Suspension of execution of a prison sentence	Article 68 of the PC	9	15%
Unknown		9	15%
Prison sentence & civil compensation	Article 69 of the PC	2	3%
Suspension of a prison sentence on condition that certain duties be performed & civil compensation	Article 69 of the PC	2	3%
Endorsement of an agreement & civil compensation		1	1%
Prison sentence & suspension of execution of a prison sentence & acquittal	Articles 66 & 68 of the PC	1	2%
Suspended prison sentence with obligations & acquittal	Article 69 of the PC	1	2%
Suspension of execution of a prison sentence & acquittal & civil compensation	Article 68 of the PC	1	2%
Suspension of execution of a prison sentence & rules of conduct	Articles 68 and 70 (g) of the Penal Code	1	2%
Total		60	100%

Graph 8: Trends in sentencing in cases involving rape monitored by JSMP in 2018



In 10 cases the courts acquitted the defendant based on the consideration that the defendant and the victim were in an intimate romantic relationship or because of the age of the defendant (the defendant was very old). In other cases the courts believed that the victim gave consent when the alleged crime occurred because the victim did not react towards the defendant.

The case study below shows that the courts have acquitted a defendant based on the consideration that the victim gave consent to have sexual intercourse with the defendant because the victim did not react against the defendant.

Case study

1. Rape³⁰

The public prosecutor alleged that on 15 July 2016 the victim was returning from her uncle's house after watching television. When the victim was walking past the defendant's house, the defendant called out to the victim three times from inside the kitchen. The victim walked towards the defendant and the defendant pulled the victim by the arm into the kitchen. The defendant twisted both of the victim's arms behind her back and tied them with a blue cable. The victim tried to yell but she couldn't because the defendant jammed an orange coloured shirt in the victim's mouth. The defendant grabbed the victim's genitals and removed her clothing and had sexual intercourse with her. The defendant threatened to run the victim over with his motorcycle or stab her to death if she told anyone.

Two days later on 17 July 2016 the victim went to pick some vegetables from the plantation and the defendant was in his plantation collecting some coconuts. When the defendant saw the victim he called out to the victim and told her to get a machete from the house to split the coconuts that he had just collected. The victim got the machete and took it to the defendant who was in the plantation. When the victim was walking back the defendant suddenly tripped her over with his leg and she fell to the ground and the defendant had sexual intercourse with the victim. After having sexual intercourse, the defendant placed the machete on the victim's throat and threatened that if the victim told the defendant's wife, then the defendant would kill her.

On 19 July 2016 the defendant's wife told the victim to pick some oranges from the plantation. The defendant knew that the victim was picking some oranges and the defendant went to wait for the victim in the plantation. When the victim was picking the oranges the defendant's wife went there and brought the oranges back to the house. After the defendant's wife took the oranges home, the defendant called out to the victim to grab the key to the door from out of the defendant's hand so she could give it to the defendant's daughter who was at home. But because she was traumatised by the defendant's behaviour, the victim told the defendant to throw the key to the victim.

The defendant did not want to and told the victim to take it from his hand. The victim went to get the key from the defendant's hand and she was going to grab it and run away but the defendant grabbed both of her arms tightly and took a sickle and threatened the victim by saying "I will use this sickle to kill you". The defendant then had sexual intercourse with the victim. As a result of these actions the victim

³⁰ This case is available in the JSMP case summary for May from the Suai District Court registered as Case No. 0064/17.PDSUA

became pregnant.

The prosecutor accused the defendant of violating Article 172 of the PC on rape which carries a penalty of 5 to 20 years in prison and of violating Article 173 (d) of the PC on aggravation because the victim was aged less than 17.

During the trial the defendant confessed that he had sexual intercourse with the victim on three occasions but with the consent of the victim. The defendant stated that he did not threaten the victim, did not use force, did not tie the victim's arms, did not use a bladed weapon to threaten the victim, did not choke the victim and did not cover the victim's mouth with a piece of cloth. The defendant stated that the victim liked to play cards and needed money so before having sexual intercourse with the victim, he always gave money to the victim; on the first occasion the defendant gave her US\$7.00, on the second occasion US\$5.00, and on the third occasion US\$3.00. The defendant stated that this case had been resolved in accordance with East Timorese custom and the defendant gave two buffaloes, cash totalling US\$2,500, five belak (traditional necklace), five fans, one container of alcohol, and one pig to the family of the victim.

The victim stated that they had sexual intercourse on three occasions and the first incident occurred at about 9pm or 10pm. The victim stated that she could not physically resist the defendant because she was powerless so when the defendant called out and told her to remove her clothing she just did what she was told. In addition, the victim confirmed that she did like to play cards. The victim also stated that this case had been resolved in accordance with East Timorese custom and the goods that were mentioned by the defendant were handed over.

Before hearing the final recommendations the court conducted an inspection of the scene of the crime to examine and assess the scene of the crime to examine clues and obtain additional information in this case, in particular to see the distance between the defendant's house and the victim's house and between the defendant's house and the victim's plantation.

The prosecutor maintained the charges and requested for the court to impose a prison sentence of 14 years. The prosecutor stated that the defendant committed multiple rapes with violence and threatened the victim and the victim became pregnant.

The defence requested for the court to acquit the defendant from the charges because the sexual intercourse was based on the consent of the two parties, and therefore the actions of the defendant did not fulfil the requirements of the crime of rape. In addition, before having sexual intercourse the defendant always gave money to the victim. This shows that the victim consented.

The court decided that the defendant was not guilty of committing rape against the victim because the sexual intercourse between the defendant and victim was based on consent. Based on the inspection of the scene of the crime the panel of judges found that the victim's house, the defendant's house and other neighbouring houses were close together or were adjacent to each other with a distance of approximately 20 metres. The distance from the houses to the plantation was approximately 50 metres. Actually the victim could have called out for help because people could have heard her and helped the victim or found out what was happening.

The court also had doubts why there was such a short gap between the first and second incident. The judges said that if the victim felt afraid or traumatised because the defendant had just raped her, then the victim should have tried to say no to the order/request made by the defendant's wife to pick oranges from the plantation, and to get a machete for the defendant and to get the key from the defendant. In addition, when the victim became pregnant she did not tell her family, and when she was close to full term the families discovered that the defendant was the father and when the families could not agree they took the matter to court.

Also because the victim liked to play cards she needed money to gamble and the defendant gave her money on each occasion and the victim confirmed this fact. Based on these considerations the court acquitted the defendant from the charges of the prosecutor.

JSMP is concerned about this decision because the court did not consider the real circumstances and the victim's capacity (limited knowledge about the legal requirements and therefore did not report the crime or scream out seeking the assistance of another person). The court also failed to assess and consider the extraordinary circumstances faced by the victim such as the defendant threatened the victim with a bladed weapon and did not make an attempt to verify the defendant's statement when he rejected these facts. Unfortunately, the court simply believed the testimony of the defendant and the results from the inspection of the scene which indicated that the defendant's house and the victim's house were close together, as a contradictory fact, and this helped the court to establish its conviction to acquit the defendant.

Ideally the court should have carefully considered and analysed why the victim did not react to the defendant and was unable to physically resist against the defendant because she had no power and/or the victim was under pressure because she was threatened. The court needed to do more and examine and cross-check each of the facts with other facts and each of the circumstance with other circumstances, rather than simply believing or relying on a single fact or circumstance.

In this case, JSMP believes that at the very least, if the alleged threats and force were not proven, the defendant still should have been convicted for committing the crime of sexual acts with an adolescent because the defendant abused the victim's sexual inexperience.

In cases of a sexual nature, it is crucial for the court to ensure that all of the relevant elements and circumstances associated with the crime are given consideration, to underpin the decision of the court. JSMP believes that there are strong indications that the defendant used force and threats and took advantage of the victim's other vulnerabilities when he committed these acts. This could have been established based on the defendant's willingness and readiness to pay civil compensation to the victim and her family when the families resolved this case.

Recommendations

15. JSMP requests for the court to develop sentencing guidelines to guarantee consistency in sentencing in cases of sexual violence. These 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.
16. JSMP has continuously requested for the courts to 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 2018 JSMP monitored 81 cases involving minor victims. These cases made up 7.8 % of all criminal case cases monitored by JSMP.

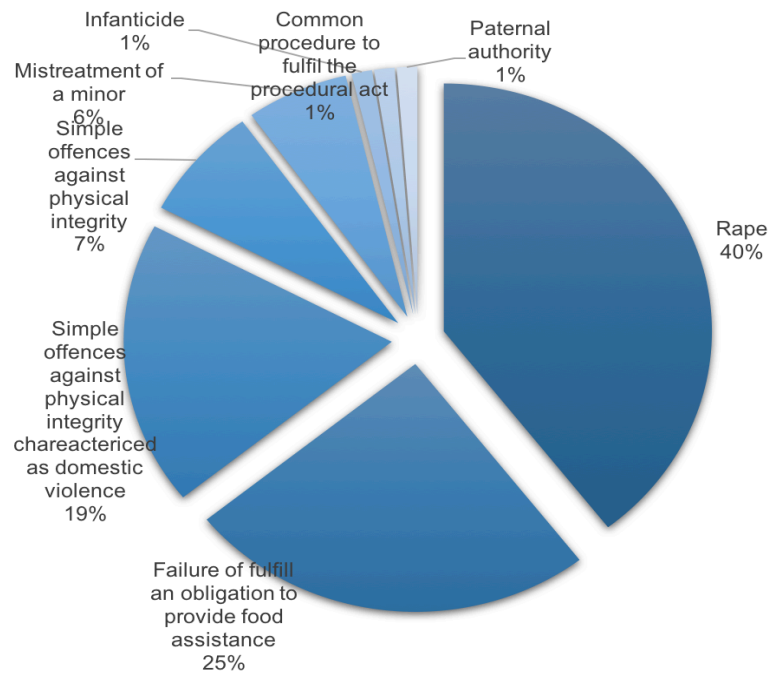
In comparison with 2017, cases involving crimes against minors that were monitored by JSMP continued to involve physical, emotional and sexual offences as well as neglect. The majority of these cases involve crimes characterized as rape or sexual abuse (40 %), followed by failure to provide food assistance (25%) and simple offences against physical integrity, DV (19%).

Table 14 : Cases involving minor victims, categorised as rape and other crimes (aged 0 – 16) monitored by JSMP in 2018

Case Type	Number of cases	%
Rape ³¹	32	40%
Failure to provide food support	20	25%
Simple offences against physical integrity, DV	15	19%
Simple offences against physical integrity	6	7%
Mistreatment of a minor	5	6%
Common procedure to fulfil the procedural act	1	1%
Paternal authority	1	1%
Infanticide	1	1%
Total	81	100%

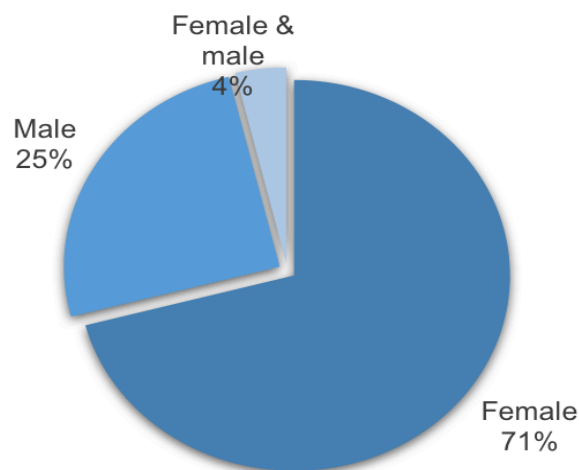
The graph 9 below shows cases involving minor victims, categorised as rape and other crimes (aged 0 – 16) monitored by JSMP in 2018

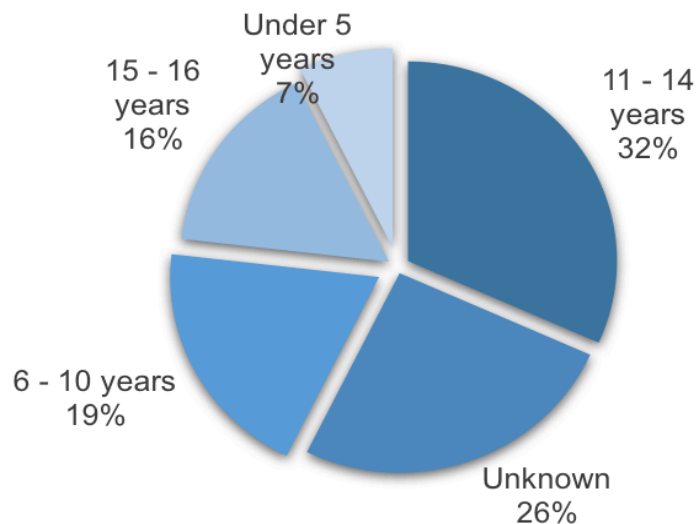
³¹ Cases types are sexual abuse of a minor, aggravated sexual abuse of a minor, sexual acts with an adolescent, aggravate rape, aggravated sexual coercion, sexual abuse of a minor and simple offence against physical integrity, incest and domestic violence, sexual abuse of a minor, continuous crime, sexual abuse of a minor, sexual acts with an adolescent and attempted termination of pregnancy.



The graph below shows that victims in most cases are girls (71%). 23% of cases involved male victims, and 4% involved both female and male victims. These crimes were committed against victims of different ages. Those who were under 12 (15%), those aged 12-13 (17%), those aged 14-16 (17%), those aged 17 or above (20 %), and those whose age was unknown (31%).

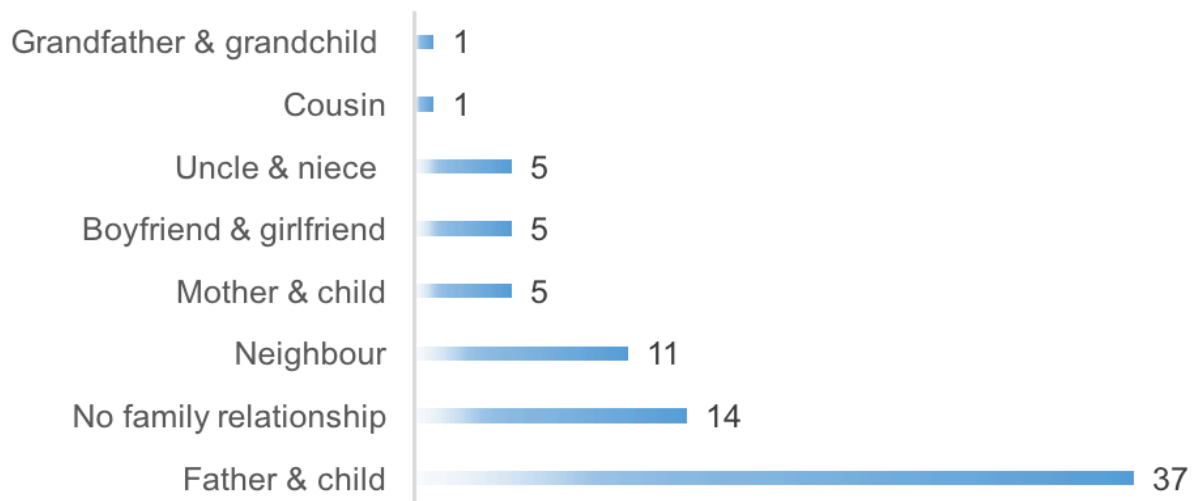
Graph 10 : Criminal cases involving minor victims monitored by JSMP in 2018 based on the victim's sex and age.





Most cases involving sexual abuse and rape against minors were committed by family members and the defendant was the father of the victim in 37 cases. There were 14 cases involving sexual abuse and rape where the defendant and the victim were unrelated, and in 11 cases they were neighbours, in 5 cases a mother offended against her child, in 5 cases involved a romantic partner, in 5 cases an uncle offended against his niece, in 1 case a male cousin offended against his female cousin, and in 1 case a grandfather offended against his grandchild.

Graph 11 : Criminal cases involving minor victims monitored by JSMP in 2018 based on the relationship between the victim and the defendant



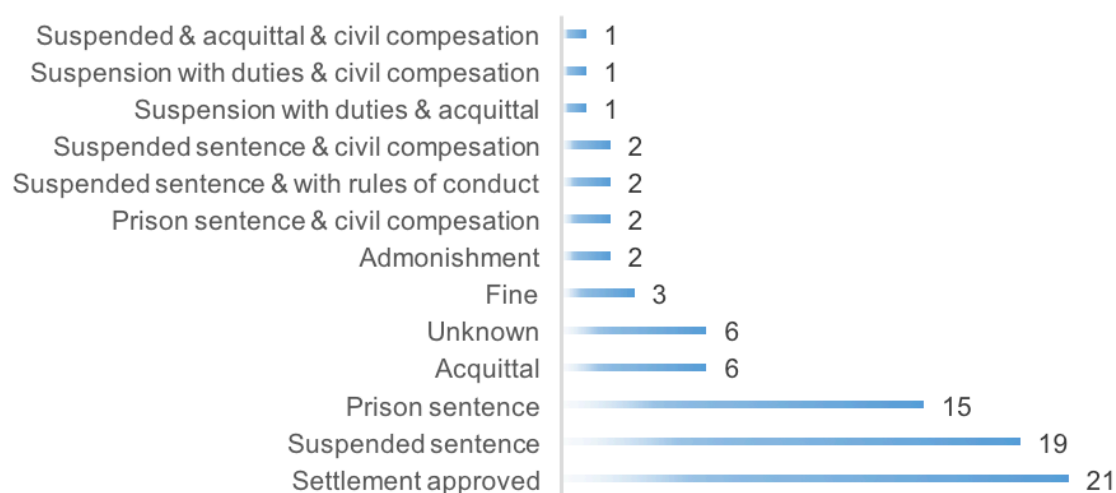
This data shows that girls continue to be vulnerable in their day to day lives, and especially because these crimes occurred in the context and sphere of family relationships which should be a place of safety for children. This data only represents a small number of offences actually occurring in society. JSMP believes

that many more cases are occurring, but due to a range of circumstances they are not reported.

3.2 TRENDS IN SENTENCING IN CASES INVOLVING DISABLED CHILDREN

In 2018 JSMP monitoring showed that the courts endorsed settlements with defendants in the most number of criminal cases (21). The courts imposed suspended prison sentences in 19 cases. The courts acquitted defendants in 6 cases involving sexual abuse, and 1 case involving sexual acts with an adolescent, and in 2 cases involving aggravated rape, and in 1 case of aggravated sexual coercion. In 17 cases defendants were sent to prison by the courts. In all of these cases the courts only applied additional obligations such as civil compensation to victims in 2 cases where a prison sentence was imposed.

Graph 12 : Trends in sentencing in cases involving minors monitored by JSMP in 2018



The graph above shows that in most cases involve children, the court did not order the defendant to pay civil compensation, and the courts only did so in five cases. As emphasised previously, ordering a defendant to pay civil compensation is a means of redressing a victim's suffering as the result of a defendant's behaviour that has had a serious psychological effect on the victim. Civil compensation is very important for deterrence, because it educates defendants that the commission of a crime will not only result in a prison sentence, but will also be very expensive.

In addition to civil compensation only being ordered in a very small number of cases, JSMP also observed that prosecutors did not use specific articles to charge defendants involved in physical crimes against children. The study case below provides evidence about this concern.

Case study

1. Simple offences against the physical integrity of a child

The public prosecutor alleged that on the morning of 3 March 2017 the defendant struck the victim in the head with a ruler 50cm in length, which caused an injury and bleeding. At that time the victim was studying mathematics and the defendant told the victim and the other students to go outside and collect some rocks to learn how to count.

When the victim and the other students came back inside to the classroom the defendant told the students to sit quietly so he could give an explanation. When he was explaining the victim and a friend were grabbing each other, so the defendant committed the assault against the victim.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity.

Before proceeding to the examination of evidence the court attempted conciliation between the defendant and the victim, but the father of the victim (who was representing the victim) wanted the case to be processed.

During the trial the defendant admitted the facts and the victim reinforced the facts set out in the indictment.

The public prosecutor requested for the court to apply a fair sentence against the defendant because he was guilty of committing the crime of simple offences against the physical integrity of the victim. The public defender also requested for the court to impose a fair penalty against the defendant.

The court found that the defendant committed the crime of simple offences against the physical integrity of the victim and ordered the defendant to pay a fine.

2. Simple offences against the physical integrity of a child

The prosecutor alleged that on 18 December 2017 the defendant told the victim to look after the cakes they were selling, but the victim did not want to and went to play with his friends. At approximately 11.30am the defendant took a piece of cloth and tied the victim's hand to the bedroom door. The victim's grandfather saw the

victim tied to the door, and made a complaint to the police and then the police removed the cloth from the victim's hands.

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(c), 35(b) and 36 of the Law Against Domestic Violence.

During the trial the defendant confessed all of the facts set out in the indictment, and regretted his actions. The court decided not to hear testimony from the victim because the victim was only seven years old.

The public prosecutor and public defender requested for the court to issue an admonishment against the defendant.

The court found the defendant guilty of committing the crime based on the facts set out in the indictment. Based on the facts that were proven, the court concluded this matter and imposed an admonishment against the defendant.

In the two cases studies above the prosecutor should have charged the defendants with Article 155 of the Penal Code on mistreatment of a minor because this is a specific article that provides adequate protection to minors based on the seriousness of these cases. As stated in Article 42 of the Penal Code, the specific provision shall apply with prejudice to the general provision. Because the victim suffered an injury and bleeding in this case, the prosecutor should have used the article that reflected the seriousness of the offence.

If a prosecutor selects the correct article this will provide the court with a better option of applying an appropriate penalty in each case. Also, in relation to the first case study, the defendant was a teacher who should not be committing violence as a means to educate students.

Recommendation

17. JSMP recommends for the Public Prosecution Service to use the correct article, namely Article 155 of the Penal Code, in cases involving children, to enable appropriate sentencing.

Amendment to the Penal Code – a separate article for the crime of incest

In 2018 JSMP monitored 6 cases of incest. From these 6 cases, 1 case was committed by an uncle against his niece, 2 cases involved a father offending against his own child, 2 cases involved a step-father offending against his step-child, and 1 case involved a male cousin offending against his female cousin. JSMP believes that this number only represents a small proportion of the true number of incest crimes occurring. This crime is hard to discover because there are a number of impediments faced by the victim such as coercion, threats, lack of adequate information and other cultural impediments.

In 2015 JSMP together with ALFeLa launched a submission entitled “Amending the Penal Code to Better Protect Women and Children”. 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.

In 2018 JSMP, ALFeLa and other teams continued to provide advocacy and met with the President of the National Parliament, Komisaun F of the National Parliament, the Minister of Justice and the Secretary of State for Equality and Inclusion in relation to amending the Penal Code to create a separate article regarding the crime of incest. In these meetings these institutions reacted positively and agreed with JSMP's position that a separate article is required for the crime of incest, but in practice there are no signs yet that the relevant ministries have made this a priority.

To update the data available and outline JSMP's efforts relating to having incest criminalised, on 22 September 2018 JSMP published a report entitled: Incest Report: Need to amend the Timor-Leste Penal Code.³² This Report provided updated information about progress achieved during the last six (6) months. This report explains how victims of incest can be better protected during each phase of court proceedings and how to deter potential perpetrators of incest. This report outlined JSMP's concerns about processes before and during court proceedings, which were similar to many concerns that were made in the 2012 report. Judges do not always consider and apply protective measures and coercive measures in cases of incest. There are delays in trying these cases, even though the courts make efforts to prioritise cases of incest.

Recommendation

³² Incest Report: Need to amend the Timor-Leste Penal Code: <http://jsmp.tl/wp-content/uploads/Relatório-Insestu-Versaun-Ikus.pdf>

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

4. CASES INVOLVING STATE AUTHORITIES

DECISIONS HANDED DOWN BY COURTS OF FIRST INSTANCE IN CASES INVOLVING STATE AUTHORITIES

In 2018 JSMP observed decisions in nine cases of corruption.³³ These cases of corruption involved State authorities performing important functions within State institutions. In previous years the Court of Appeal managed to issue a decision in two cases involving State authorities, namely Cancio Freitas, the former Minister for Education, and Domingos Caero, the former Secretary of State for Public Works.

JSMP observes some positive trends in the justice sector related to the corruption cases. This trend can be proved through the cases that involving many of former officials or state officials continue to be tried in court even though continue to facing various of challenges. These challenges include revocation of immunity for members of ministers or members parliamentarians who often encounter difficulties and some challenges related to attempts of political interference in certain cases.

Recent discourse and public debate shows a trend and serious concern about the commitment to fight against corruption. One concrete example is when President Francisco Guterres Lu-Olo, swore in the members of the eighth constitutional government, the President refused to swear in the Ministers who had been convicted of criminal offences or who had been charged with a criminal offence or were under investigation. This refusal was conveyed in a very diplomatic manner by asking the Prime Minister Taur Matan Ruak to reconsider nine of Ministerial candidates who had been rejected on these grounds. This signal shows a clear commitment from the President to ensure that members of the government have to be free from any kind of allegations of corruption and to promote good and clean governance. The President also transmitted the public concern that the state needs public officials who are free from criminal charges to ensure the credibility and integrity of government institutions. This also reflects the current reality regarding the complexity and challenges in terms of fighting to end corruption cases.

The following is an illustration of the trial of Lucia Lobato's case and one of the public officials in her Ministry accused of involvement in a corruption case while serving as a Ministry of Justice in the fourth constitutional government in 2007.

³³ A summary on cases of corruption observed by JSMP in 2018 is available in Annex B.

TRIAL PROCESS INVOLVING THE DEFENDANTS LUCIA LOBATO AND HELENA MADEIRA GOMES

Judicial Facts

The first defendant was Lucia Lobato, the Minister of Justice in 2007, and the second defendant was Helena Madeira Gomes, the Director at the National Directorate of Prison Services and Social Reintegration, within the Ministry of Justice, in 2007.

In 2007 and 2008 the two defendants allegedly conspired by getting together and formulating a plan to gain an advantage from a rehabilitation project of the Gleno prison, in Ermera District. The actions of the two defendants caused the State to suffer a loss of US\$ 406,000.

The two defendants came up with a plan for rehabilitating Gleno Prison using single source procurement which was not included in the 2007 budget plan. The single source procurement for the rehabilitation of Gleno Prison was done three times and the total budget was US\$ 500,000.

This project had no design, no Bill of Quantity (BoQ) and technicians from the Ministry of Public Works had no knowledge of it, and there was no verification of the design or the rehabilitation process. The two defendants violated Decree-Law 10/2005 on Judicial Regime for Procurement which states that when the value or funding required for a project is higher than US \$100,000 a public tender must be used. However, when a project uses single source procurement, justification must be provided about the why this project is urgent.

There were strong indications that the defendant Lucia Lobato also conspired with the United General Construction company because she was suspected of being related to the company owner.

On an unspecified date in 2007 the defendant Lucia Lobato rang Miguel dos Santos who was the commissioner of the General Construction Company for the urgent rehabilitation of 5 rooms at the Gleno Prison with a budget of US\$133,739.85. On 18 October 2007 the Ministry Of Finance approved the line item for the urgent maintenance of Gleno prison on the grounds that prisoners would be transferred to Gleno. This rehabilitation included replacing corrugated iron, fixing taps and water pipes, the painting of walls and fixing doors and windows of the building, laying concrete as well as tiling and repairing toilets. The rehabilitation finished in October 2007.

Then on 19 November 2007 the General Construction Company presented a new

proposal totalling US\$ 255,680.55 for rehabilitating Gleno prison without any detailed justification with the agreement that this work would be completed by 12 March 2008. The Defendant Lucia Lobato approved this proposal and sent it to the Ministry of Finance. On 25 March 2008 the Ministry of Finance made the final payment for this rehabilitation.

Before the second phase of rehabilitation had been finalised, on 10 March 2008 the aforementioned company presented a proposal to substitute the rehabilitation of 5 rooms totalling US\$ 92,167.20 to the defendant Helena Gomes who was the Director of the National Directorate for Prison Services and Social Reintegration (DNSPRS), for work including the previous rehabilitation work. This rehabilitation included fixing pathways, doors to the police station, the installation of wiring in the doctor's office, plastering the fence and building foundations and replacing corrugated iron. The defendant Helena Gomes signed it and sent it to the defendant Lucia Lobato.

Charges of the public prosecutor

The prosecution alleged that the two defendants violated Article 299 of the Penal Code on economic participation in business that carries a prison sentence of 3-15 years. The prosecution also recommended for the defendants to pay civil compensation to the State totalling US\$ 500,000.

Trial to examine evidence

During the trial the defendant Helena Madeira stated that she signed an additional payment request for the company responsible for this project, however she signed it because administration demanded it and she didn't really know the contents of this request, because the request for payment was written in English.

The defendant also stated that she had no knowledge about the tender process, because this is the competence of the Ministry of Finance, and the defendant placed her signature because there was an instruction that the budget for the rehabilitation of Gleno Prison had been approved.

The defendant Lucia Lobato stated that she prepared the request for the rehabilitation of Gleno Prison, in Ermera District, because at that time there were too many prisoners in Baucau Prison and the prison was in poor condition. Therefore she made the request for the rehabilitation of Gleno Prison to move the prisoners to Gleno Prison.

This request for single source procurement was acknowledged and approved by the Ministry of Finance. The defendant denied that she received any benefit from this project because all of the payments were made by the treasurer directly to the company's bank account.

In relation to losses suffered, the defendant stated that from the time that the rehabilitation was completed, she never received any complaint about the project, and there was no evaluation of the project showing that the quality was poor. On the contrary, the rehabilitated Gleno Prison is still in good condition and has had no further rehabilitation projects until now.

The defendant also denied being related to the owner of the United General Construction company and never had a prior meeting to discuss this issue with this company.

The witnesses Julio Soares and Agapito Mendonça were prison guards at Dili Prison and they testified that at that time Baucau Prison was not suitable to house prisoners because in addition to being in poor condition, there was also overcrowding. Based on these circumstances, the Government, via the Ministry of Justice, had a plan to move the prisoners to another prison and the Minister of Justice, the defendant Lucia Lobato, at that time suggested for the prisoners to be moved to Gleno prison. However, in the end the prisoners were not moved to Gleno Prison but rather to Dili Prison.

The witnesses Miguel dos Santos and Jiram Anak Usang as the owners of the United General Construction Company did not appear in the court because their whereabouts were unknown. So the court did not hear from these two witnesses and decided to give consideration to the statement from the witness Miguel dos Santos made before the Public Prosecution Service who testified that the defendant Lucia Lobato rang him to verify that the Gleno Prison required urgent attention. Then the defendant ordered the company to prepare a design and Bill of Quantity (BoQ) for the defendant for the urgent rehabilitation of the Gleno Prison.

Before progressing to final recommendations the court requested for the charges to be amended from Article 299 to Article 3 of Indonesian Law No. 31/1999 on the Eradication of Crimes of Corruption, because the crime occurred before the Timor-Leste Penal Code was in force.

The prosecution had no objection to the request for amending the charges made by the court, however the defence did not agree and objected to having the charges amended because the Indonesian Law allowed for the defendants to be given a lifelong sentence³⁴.

³⁴ The court adjourned the trial many times and the prosecution and defence requested time to respond to an instruction from the court to present new facts and a request to amend the charges made by the court to apply Indonesian Law. The first new fact was the transfer of 55 prisoners from Baucau Prison to Dili Prison. The court also considered the health of the defendant who was suffering from an illness to be a new fact.

Final recommendations

The prosecution stated that the facts set out in the indictment had all been proven based on the statement of the witness and documents that the two defendants conspired to prepare a plan for the rehabilitation of Gleno Prison using single source procurement that was not included in the 2007 budget plan. The single source procurement for the rehabilitation of Gleno Prison was done three times with a total budget of US\$ 500,000.

The prosecution also stated that this project had no design, no Bill of Quantity (BoQ) and technicians from the Ministry of Public Works had no knowledge of it, and there was no verification of the design or the rehabilitation process. The prosecution stated that the two defendants violated Decree-Law No.10/2005 on Judicial Regime for Procurement which states that if a project is more than US\$ 100,000 in value then a public tender must be held, and when Single Source procurement is used for a project, it is necessary to provide justification why the project is urgent.

The prosecution added that in this case the two defendants failed to provide any justification why they decided to use single source procurement. The prosecution disagreed with the testimony of witnesses who were prison guards at Gleno Prison that the prison needed to be rehabilitated urgently because it was going to receive prisoners from Baucau Prison. In the end, the prisoners from Baucau Prison were not relocated to Gleno Prison but rather they were moved to Becora Prison in Dili.

The public prosecutor stated that the defendant Helena was guilty because she signed a contract for this rehabilitation with the General Construction Company totalling US\$ 92,167.20. The prosecutor discovered that Miguel dos Santos, who was the commissioner of the company that won the tender, is the cousin of the defendant Lucia Lobato.

Based on all of these facts the prosecution requested for the court to convict the two defendants for committing the crime of economic participation in business on three occasions, and each charge carries a prison sentence of 5 years, for a total sentence of 15 years. The prosecution requested for the court to sentence each defendant to 7 years in prison. In addition, the prosecutor requested for the court to order the two defendants to pay civil compensation of US\$406,000.

The defence requested for the court to acquit the defendant Lucia Lobato from the charges of the public prosecutor, because the rehabilitation of Gleno Prison was urgent because at that time the Baucau Prison was in poor condition and was full. However, in the end another decision was taken not to move the prisoners to Gleno Prison, but to Dili Prison, and this was not the defendant's responsibility, but rather the decision was made by the Directorate of Prisons.

The defence also disagreed with civil compensation because in reality the money was used for the rehabilitation of the prison and there was no proof showing that the two defendants conspired to share money with each other or to obtain an advantage from the two companies that won the tender.

The defence requested for the court to acquit the defendant Helena Gomes from the charges of the prosecution because she was not competent to make a decision about the tender. The defendant signed the contract for this project, but because the Ministry of Finance had given approval to carry out this project.

Decision from the Court of First Instance

After evaluating all of the evidence that was presented, the court accepted some of the charges of the prosecution: namely that the defendant Lucia Lobato made three (3) consecutive requests for the rehabilitation of the Gleno Prison that was in poor condition, because prisoners need to be transferred from Baucau because Baucau Prison was full and there was no more space. However, the court found that this was unreasonable because the prisoners were not moved to Gleno Prison but rather to Becora Prison.

The court also found that the defendant Lucia Lobato spoke directly with the United General Construction company about the rehabilitation of Gleno Prison and the same rehabilitation works were carried out. In addition, the court also found that the rehabilitation of Gleno Prison was not verified by the Ministry of Public Works because it had no knowledge of the project.

The court did not find that the defendant Lucia Lobato was related to the owner of the United General Construction company.

In relation to the defendant Helena, the court found that the defendant signed a payment request for the rehabilitation of Gleno Prison by the United General Construction company for items coinciding with the first phase totalling US\$92,167.20. The court found that actually the defendant had the competence to stop this project but she did not do so.

The court found that the actions of the two defendants disadvantaged the State because the project was approved using single source procurement. The two phases of rehabilitation were for the same items with a long interval in between. Therefore, the court found that there was no logic for this expense and it benefitted the companies.

Reference was made to Article 3³⁵ of Law No. 31/1999 on the Eradication of Crimes of Corruption, with reference to Article 3.3 of the Timor-Leste Penal Code on the principle of retroactivity as well as Article 299 of the Penal Code on economic participation in business. The court also considered the mitigating circumstances, such as the fact that the defendant Lucia Lobato was ill, and then the court concluded this matter and sentenced the defendant Lucia Lobato to three years in prison, suspended for five years, and ordered her to pay civil compensation of US\$124,862.59. The court also ordered this defendant to pay court costs of US\$ 200. The court sentenced the defendant Helena Madeira to two years in prison, suspended for three years, and ordered her to pay civil compensation of US\$92,167.20.

The prosecutor lodged an appeal with the Court of Appeal because he did not agree with the sentence imposed on the defendants and also because he believed the amount of civil compensation was too small.

Observations and comments

The case involving Lucia Lobato attracted public attention, as well as the attention of JSMP which has been regularly following proceedings at the courts. JSMP is interested in analysing the case of Lucia Lobato because previously on 8 June 2012 the Dili District Court sentenced the defendant to five years in prison and this decision was upheld by the Court of Appeal on 12 December 2012. The court found that Lucia Lobato was guilty of committing the crime “economic participation in business” as well as Antonio Freitas who headed a department of the Directorate of Procurement within the Ministry of Justice during 2008 and 2009³⁶. There was not much of a gap between the first case and the last case, because the current case occurred in 2007 and the other case occurred in 2008 and 2009. All of these cases occurred when Lucia Lobato was the Minister of Justice within the Fourth Constitutional Government.

JSMP observed a number of substantial and procedural issues during proceedings involving the defendant Lucia Lobato that could potentially undermine and violate the legitimate rights of the defendant.

³⁵ Anyone with the intention of enriching himself or other persons or a corporation, abusing the authority, the facilities or other means at their disposal due to rank or position in such a way that is detrimental to the finances of the state or the economy of the state, shall be liable to life imprisonment or a prison term of not less than 1 (one) year and not exceeding 20 (twenty) years and/or a fine of not less than Rp 50,000,000 (fifty million rupiah) and not exceeding Rp 1,000,000,000 (one billion rupiah).

³⁶ Overview of the Justice Sector 2012, available at: http://jsmp.tl/wp-content/uploads/2013/04/OJS-2012_Final_Tetum_5-April-2013.pdf

Article 35 of the Penal Code on joinder of crimes allows for joinder whenever the perpetrator having committed a crime, commits another crime before final sentence is rendered.³⁷

In addition, Article 20.1 (b) of the Criminal Procedure Code on full relationship states that; “the same or different perpetrators have committed various criminal offences through the same conduct, or at the same time or place, or where some of such offences are the cause or effect of others, or where some are meant to carry on or hide others”.

Probably because of technical issues during the investigative process, the prosecutor preferred to charge these cases separately even though they happened in close succession. JSMP believes that when the prosecution starts investigating a crime and believes there is strong evidence that the defendant has committed or is involved in another crime, then in the interests of effective justice the prosecution should prosecute the matters together based on the principle of joinder of crimes.

When a prosecutor prosecutes multiple crimes together this will save time and resources and ensure that proceedings are efficient. This is also linked to the defendant's right to a fair trial before a court that is fair, competent, independent and impartial pursuant to articles 14 and 15 of the Convention on Political and Civil Rights ratified by the State of Timor-Leste.

JSMP also discovered some procedural irregularities in the first case (2008-2009) relating to the composition of the panel at the Court of Appeal as well as serious allegations about a ‘conspiracy’ from the defendant Lucia Lobato against members of the panel at the Court of Appeal, but no official response/clarification was given and there was no investigation into these allegations.

In the current case the Dili District Court was the court of first instance, and the trial of this case started in March 2018 and the court of first instance issued its decision in September 2018. Now the case is with the Court of Appeal.

During the examination of evidence the court adjourned the trial many times because the whereabouts of witnesses were unknown. Also, the prosecution and defence requested time to respond to an instruction from the court to present new facts and a request to amend the charges made by the court to apply Indonesian Law. This was

³⁷ Article 35.1 of the Penal Code states that the number of crimes is considered the number of legally defined types of actually committed crimes, or by the number of times that the same type has been committed through the conduct of the perpetrator.

Article 35.2 states that the purpose of applying the following article, joinder is whenever the perpetrator, having committed a crime, commits another crime before final sentence is rendered.

in addition to other new facts about the transfer of 55 prisoners from Baucau Prison to Dili Prison and the health of the defendant who was suffering an illness.

The public defender stated that the amendment to apply Indonesia Law violated the principle set out in Article 32.1 of the Timor-Leste Constitution³⁸ on limits on sentences and security measures that does not allow a lifelong sentence. Also, the public defender stated that this amendment violated Article 31.5 of the Timor-Leste Constitution³⁹ that states that criminal law shall not be enforced retroactively, except if the new law is in favour of the accused. The health of the defendant Lucia Lobato was considered to be a fact in its decision, and the court should have considered this to be a mitigating circumstance.

JSMP's position on the use of Indonesia Law No. 31/1999

The Timor-Leste Constitution protects the principle of non-retroactivity of law. That is, a law only applies to events that occur after its implementation. Article 31.5 of the Timor-Leste Constitution on application of criminal law states that Criminal law shall not be enforced retroactively, except if the new law is in favour of the defendant. In addition to that Article 3.3⁴⁰ of the Timor-Leste Penal Code that states that the law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

In this case the court amended Article 299 of the Penal Code to Article 3 of Indonesian Law, No. 31/1999 with the consideration that this crime occurred when the Timor-Leste Penal Code had not yet come into force, although the court knew that the Penal Code was more favourable to the defendants. This is a serious violation to standards set out in the Constitution and the applicable criminal law.

The Indonesian Penal Code in Article 14.1 states that the court can suspend a prison sentence if the sentence is no longer than one (1) year. Meanwhile Article 68.1 of the Timor-Leste Penal Code states that the court can only suspend a prison sentence that does not exceed 3 years, for a period between one and five years.

³⁸Article 32.1 of the Timor-Leste Constitution RDTL on limits on sentences and security measures states that there shall be no life imprisonment nor sentences or security measures lasting for unlimited or indefinite period of time in the Democratic Republic of Timor-Leste.

³⁹Article 31.5 of the Timor-Leste Constitution on application of criminal law states that Criminal law shall not be enforced retroactively, except if the new law is in favor of the accused.

⁴⁰Article 3.3 of the Penal Code on applicability of criminal law over time states that The law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

JSMP believes that if the court properly applied the Indonesian Penal Code, then the defendants were not eligible for a suspended sentence because this is contrary to the principles and provisions of the Indonesian law. In particular, the minimum sentence provided for in Article 3 of the Law Against Corruption is 1 year and the maximum sentence is 20 years. In this case the court applied a three year prison sentence against the defendants, suspended for five years.

JSMP observed that the court was inconsistent and ambiguous in its application of the principle of retroactivity, because on one hand the court referred to the Indonesian Penal Code but the sentence imposed did not adhere to the rules and principles of the Indonesian Penal Code.

The health of the defendant was considered to be a new fact

In this case, during the examination of evidence the court not only made a request to amend Article 299 of the Penal Code to Indonesia Law, No. 31/1999, but the court also made an amendment and gave consideration to the ill health⁴¹ of the defendant Lucia Lobato as a new fact in this case.

Article 109 of the Criminal Procedure Code⁴² on elements of proof states that health is not a fact because it has no legal relevance to a case in establishing criminality. JSMP believes that health (serious illness) can be considered as a mitigating circumstance or extraordinary mitigating circumstance. However, in its decision (72 pages) the court considered the health of the defendant to be a new fact.

JSMP recommends for the courts to properly interpret the principles and be consistent when applying judicial principles relating to what should be considered as facts and what should be considered as circumstances surrounding this crime. This is to ensure the credibility of this case and to guarantee the rights of the defendant are dealt with properly and trial proceedings are held in a fair and accountable manner.

JSMP agrees that the courts and the relevant authorities in the justice sector need to take all steps possible to prosecute cases, because corruption is a serious crime which impedes national development, destroys common, social and human norms and undermines the values of democracy. However, JSMP recommends for judicial

⁴¹ Page 12 of the decision from the Dili District Court.

⁴² Article 109 of the Penal Code on elements of proof states that define Elements of proof comprise any facts that are legally relevant to the existence or non-existence of a criminal offence, the punishability or unpunishability of the defendant, and the determination of the sentence, or security measure, or of any civil liability that may arise from the case.

authorities to uphold their obligation to fully adhere to the principles and legitimate rights enshrined in the law.

5. ROLE OF THE PUBLIC DEFENDER ACCORDING TO THE LAW IN TIMOR-LESTE

The principle on access to justice in Article 26 of the Timor-Leste Constitution guarantees that all citizens have the right to access the courts to defend their legally protected rights and interests and justice shall not be denied for insufficient economic means.

The Office of the Public Defender plays an important role in ensuring and guaranteeing equal access and justice for all citizens, by upholding the commitment to guarantee the rights of citizen to access the courts and to obtain legal advice, so that all citizens know their rights.

The Office of the Public Defender has a high sense of professionalism and public service and must carry out its mission in accordance with the Constitution and Statute of the Office of the Public Defender to defend citizens who lack economic means or who are vulnerable in regards to accessing formal justice. JSMP monitoring at the courts has indicated that the assistance provided by public defenders often contradicts their competencies as provided for in Article 3 of the statute that states that public defenders have the competency to guarantee free access to justice for citizens who lack economic means. However, in a number of cases the defendants have been members of the government, public servants and entrepreneurs who have received most of the assistance provided by public defenders.

When they do provide assistance to those who don't have economic means, JSMP has also noted that some of the assistance is not well provided. For example, in some cases public defenders do not meet with their clients before a trial to discuss how the trial will progress. Therefore when the trial starts they ask the court to suspend the matter for 5 or 10 minutes so that they can talk with their client about procedural matters.

Based on its observations, JSMP believes that these issues have emerged because of a lack of human resources available to the Office of the Public Defender which has a heavy work load. The Government has also not invested much in the Office of the Public Defender, especially in terms of increasing the number of public defenders. It is difficult to manage resources to provide individual assistance because this office is still financially dependent on the Ministry of Justice.

The table below shows the number of public defenders in each court and their work load in 2018 and the next table shows the assistance given to those who have economic means.

Table 15 : Number of public defenders allocated to the courts and the total number of cases assisted by each public defender in 2018 based on JSMP monitoring

District courts	Number of public defenders	Total cases assisted by public defenders in 2018	Public defender	Total cases for each public defender
Dili	20	300	João H. Carvalho	25
			Afonso Fatima Gomes	22
			José da Silva	20
			Marçal Mascarenhas	19
			Agostinha Oliveira	19
			Joana Cristina Pinto	18
			Rui Manuel Guterres	18
			Humberto Alves	15
			Jonas H. Da Costa	15
			Estaque Pereira Guterres	14
			Olga Barreto	14
			Marcia Sarmento	14
			Fernando Lopes de Carvalho	13
			Sebastião Amado de Almeida	13
			Manuel Sarmento	12
			Laura Valente Lay	12
			Cancio Xavier	11
			Juvinal Yanes Freitas	11
			Sergio Dias Quintas	9
			Manuel Lito Exposto	6
Baucau	4	236	José Maria Guterres	86
			Sidonio Maria Guterres	61
			Antonio Fernandes	50
			Grigorio de Lima	39
Suai	3	158	Manuel Amaral	53
			Fransisco Caetano Martins	38
			Albino de Jesus Pereira	67
Oecusse	2	191	Calisto Tout	90
			Marcelino Marques Corro	101
Total cases:885				

In 2018 JSMP monitored 885 cases where public defenders provided legal aid in the four district courts (Dili, Baucau, Suai and Oecusse). This shows that a very large number of cases were given to the 29 public defenders, and this does not include other cases that were not monitored by JSMP and civil cases that have not yet been registered at the courts and cases where public defenders have conducted pre-trial mediation on site or at the Office of the Public Defender.

The allocation of such a large number of cases to such a small number of public defenders means it is not possible to guarantee speedy and high quality assistance because there is not enough time for each public defender to provide proper assistance (to meet with clients or provide legal advice before the trial commences, to contest, provide a defence in a trial, facilitate mediation, lodge appeals and/or prepare petitions in civil cases).

JSMP also observed that from the cases that were monitored above, 113 cases were identified by JSMP where public defenders gave assistance when they were not supposed to because the clients had sufficient economic means to pay a private lawyer to obtain assistance.

Table 16 : Public servant, entrepreneur and members of Government given assistance by public defenders

District Courts	Number of public servants, police and F-FDTL who received assistance from public defenders	The number of entrepreneurs and traders who received assistance from public defenders	The number of former members of government and the national parliament who received assistance from public defenders
Dili	33	18	5
Baucau	4	3	0
Suai	4	6	0
Oecusse	25	15	0
Total	66	42	5

JSMP believes that public defenders should reject requests for assistance from those who have economic means as set out in the table above, because Article 17 of

the Statute of the Office of the Public Defender states that if an applicant with the economic means described in Article 17 requests assistance from a public defender, then this article allows for public defenders to reject requests for assistance from those who have economic means.

JSMP also believes that although no table has been provided to specify those considered to have insufficient economic means (vulnerable), if a person's is identified during a trial to be a public servant, entrepreneur or former member of government, then public defenders can terminate their assistance pursuant to the aforementioned article.

Recommendations

6. Recruit more public defenders to respond to the ever increasing number of cases.
7. The Office of the Public Defender should be financially independent of the Ministry of Justice so that they can manage their own resources based on existing needs.
8. Public defenders need to adhere to the law and the Statute of the Office of the Public Defender and only provide assistance to those lacking economic means. Private lawyers can provide assistance to those with economic means.

CONCLUSION

This overview of the justice sector aims to provide useful, updated and credible information to the public based on JSMP's independent monitoring relating to progress achieved and challenges faced by the sector justice in 2018.

The Timor-Leste justice sector continued to demonstrate important progress and also encountered challenges. Challenges included insufficient budgets for all elements of the justice sector, such as the Ministry of Justice, the Court of Appeal and the Public Prosecution Service, and the lack of qualified interpreters available to interpret local languages during trials.

In 2018 JSMP observed that courts continued to try cases involving gender-based violence and the courts most often applied suspended prison sentences without rules of conduct in such cases as well as the inconsistent application of civil compensation. Therefore, JSMP recommends for the courts to apply rules of conduct in more cases and order convicted persons to report to local authorities such as the village chief to guarantee the aim of the sentence. 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, as well as a request for the consistent application of civil compensation.

ANNEX A - STATISTICS

Tabela A – Criminal cases monitored by JSMP in 2018

Case type	Article(s)	Number of cases
Simples offences against physical integrity characterized as domestic violence	Article 145 PC & Article 35 LADV	485
Simples offences against physical integrity	Article 145 PC	172
Mistreatment of a spouse	Article 154 PC	48
Driving without a license	Article 207 PC	27
Smuggling	Article 316 PC	24
Property damage	Article 258 PC	20
Failure to fulfill an obligation to provide food assistance	Article 225 PC	19
Threats	Article 157 PC	18
Aggravated larceny	Article 252 PC	14
Reciprocal offences against physical integrity	Article 151 PC	13
Simples offences against physical integrity & property damage	Article 145 & 258 PC	11
Simples offences against physical integrity & threats characterized as domestic violence	Article 145 & 157 PC & Article 35 LADV	7
Aggravated rape	Article 172 & 173 PC	7
Serious offences against physical integrity	Article 146 PC	7
Sexual abuse of a minor	Article 177(1) PC	7
Homicide	Article 138 PC	7
Simples offences against physical integrity & threats	Article 145 & 157 PC	5
Rape	Article 172 PC	5
Sexual acts with an adolescent	Article 178 PC	5
Mistreatment of a minor	Article 155 PC	5
Aggravated property damage	Article 259 PC	5
Aggravated fraud	Article 267 PC	5
Sexual coercion	Article 171 PC	4
Aggravated sexual abuse of a minor	Article 177(1) & 182 PC	4

Manslaughter	Article 140 PC	4
Aggravated homicide	Article 139 PC	4
Attempted, punishability of attempted rape	Article 23 & 24 & 172 PC	3
Larceny	Article 251 PC	3
Simple offences against physical integrity, property damage characterized as domestic violence	Article 145 & 258 PC & article 35 LADV	3
Fraud	Article 266 PC	3
Aggravated larceny & simple reception of stolen goods	Article 252 & 271 PC	3
Attempted homicide	Article 23 & 138 PC	3
Obstructing public authority	Article 243 PC	3
Sexual abuse of a person incapable of resistance	Article 179 PC	2
Illegal gambling	Article 322 PC	2
Aggravated sexual abuse of a minor	Article 177(2) & 182 PC	2
Sexual exhibitionism	Article 181 PC	2
Negligent offences against physical integrity	Article 148 PC	2
Unlawful entry	Article 185 PC	2
Serious offences against physical integrity & white weapons crime	Article 146 PC and Article 20 (1) Law No. 5/2017	2
Aggravated appropriation through abuse of trust	Article 257 PC	2
Aggravated sexual coercion	Article 171 & 173 PC	2
Misappropriation of public assets characterized as corruption	Article 296 PC	2
Embezzlement characterized as corruption	Article 295 PC	2
Aggravated homicide characterized as domestic violence	Article 139 PC & article 35 LADV	2
Property damage & threats	Article 258, 157 PC	2
White weapons crime	Article 2 no 19 law No. 5/2017	2

Mistreatment of a spouse, threats characterized as domestic violence	Article 154 & 157 PC & article 35 LADV	1
Serious offences against physical integrity, characterized as domestic violence	Article 146 PC & article 35 LADV	1
Simple offences against physical integrity, property damage & larceny & threats characterized as domestic violence	Article 145 & 258, 251 & 157 PC & article 35 LADV	1
Simple offences against physical integrity & obstructing public authority characterized as domestic violence	Article 145 & 243 PC & article 35 LADV	1
Sexual abuse of a minor & continuous crime	Article 177(1) & 41PC	1
Aggravated sexual abuse of a minor characterized as Incest domestic violence	Article 177(1) & 182 PC & article 35 LADV	1
Sexual abuse of a minor & simple offences against physical integrity characterized as domestic violence	Article 177(2) & 145 PC & article 35 LADV	1
Aggravated sexual abuse of a minor characterized as domestic violence Incest domestic violence	Article 177(2) PC & article 35 LADV	1
Aggravated sexual abuse of a minor characterized as Incest	Article 177(1) & 182 PC	1
Sexual abuse of a minor	Article 177(2) PC	1
Sexual abuse of a minor & sexual acts with an adolescent & attempted termination of pregnancy	Article 177 & 178 & 23 & 141 KP	1
Aggravated rape characterized as Incest domestic violence	Article 172 & 173 PC & article 35 LADV	1
Rape & termination of pregnancy & simple offences against physical integrity characterized as Incest domestic violence	Article 172 & 141 & 145 PC & article 35 LADV	1
Attempted aggravated rape	Article 23 & 172 & 173 PC	1
Attempted rape	Artigu 23 & 172 KP	1
Attempted & punishability of attempted & aggravated sexual abuse of a minor	Article 23 & 24, 177(2) & 182 PC	1
Attempted sexual coercion & rape	Article 23 & 171 & 172 PC	1
Sexual fraud	Article 180 PC	1

Sexual exploitation of a third party & abduction & rape & attempted homicide	Article 174 & 161 & 172 & 23, 138 PC	1
Sexual exploitation of a third party	Article 174 PC	1
Child pornography & sexual acts with an adolescent	Article 176 & 178 PC	1
Public disclosure of private information	Article 183 PC	1
Infanticide	Article 142 PC	1
Termination of pregnancy	Article 141 PC	1
Negligent mismanagement & abuse of power characterized as corruption	Article 275 & 297 PC	1
Embezzlement intentional mismanagement characterized as corruption	Article 295 & 274 PC	1
Abuse of power & economic involvement in business characterized as corruption	Law No 31/1999 year	1
Embezzlement & misappropriation of public assets & intentional mismanagement & forgery of documents or technical report characterized as corruption.	Article 295, 296, 274 & 303 PC	1
Embezzlement & negligent mismanagement & abuse of power characterized as corruption	Article 295, 275 & 297 PC	1
Economic involvement in business & forgery of documents or technical report characterized corruption	Article 299 & 303 PC	1
Aggravated fraud & abuse of power & use of another person's identification document characterized corruptin	Article 267, 297 & 306 PC	1
Abuse of power & mismanagement of public funds characterized corruption	Article 297 & 319 PC	1
Active corruption characterized corruption	Article 294 PC	1
Abuse of power	Article 297 PC	1
Aggravation human trafficking & forgery of documents or technical report	Article 163, 164 & 303 PC	1
Failure to fulfill an obligation to provide food assistance & threats	Article 225 & 157 PC	1
Simple offences against physical integrity & instigation to commit a crime	Article 145 & 189 PC	1
Simple offences against physical integrity & abduction	Article 145 & 161 PC	1

Simple offences against physical integrity and driving without a license	Article 145 & 207 PC	1
Simple offences against physical integrity & White weapons crime	Article 145 PC & article 20 (1) law No. 5/2017	1
Negligent offences against physical integrity & driving without a license	Article 148 & 207 PC	1
Appropriation through abuse of trust & simple reception of stolen goods	Article 256 & 271 PC	1
Aggravated homicide & white weapons crime	Article 139 PC & article 2 no 19 law No 5/2017	1
Aggravated property damage & simple offences against physical integrity	Article 259 & 145 PC	1
Disobedience	Article 244 PC	1
Aggravated receptions of stolen goods	Article 272 PC	1
Simple reception of stolen goods	Article 271 PC	1
Crimes against fauna or flora	Article 217 PC	1
Attempted & homicide and joinder of crime	Article 23, 138 & 35 PC	1
Smuggling & prohibited weapons	Article 316 & 211 PC	1
Robbery	Article 253 PC	1
Prohibited weapons	Article 211 PC	1
Aggravated fraud & violation of the rule of law & criminal association & abuse of public signals or uniform	Article 267, 202, 188 & 194 PC	1
Attempted homicide & white weapons crime	Article 23 & 138 PC and article 2 no 19, Law No. 5/2017	1
Attempted aggravated homicide white weapons crime	Article 23 & 139 PC and article 20 no.1 law No 5/2017	1
Total		1036

Table B – Civil cases JSMP monitored in 2018

Case type	Article(s)	Number of cases
Common procedure to fulfil the procedural act	Article 5(2), 20, 347(2), 790 CC & Article 136, 1758 - 1761 (2) & 1787 (1c)	1
Paternal authority	Article 1787 CC	1
Total		2

Table C : Cases JSMP monitored in 2017 by Court

Court	Criminal cases	Civil cases	Total
Baucau District Court	276	0	276
Dili District Court	351	1	352
Oecusse District Court	201	0	201
Suai District Court	208	1	209
Court of Appeal	0	0	0
Total	1036	2	1038

Table D: Case statistics from all Courts (Courts of Appeal and District Courts) in 2018

Criminal cases	Total
Pending from 2017	3757
New cases	2896
Decision	2821
Total pending	3832

Civil cases	Total
Pending from 2017	1155
New cases	543
Decision	294
Total pending	1404

Table E: Case statistics from the Court of Appeal for 2018
Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2017	111	114	100	112	125	136	142	154	157	152	180	170	111
New cases	15	10	17	24	22	20	21	13	7	36	17	14	216
Decision	12	24	5	11	11	14	9	10	12	8	27	17	160
Total pending	114	100	112	125	136	154	129	157	152	180	170	167	167

Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2017	33	37	38	40	40	45	47	43	44	42	44	46	33
New cases	4	1	4	1	6	3	1	1	0	4	2	3	30
Decision	0	0	2	1	1	1	5	0	2	2	0	2	16
Total pending	37	38	40	40	45	47	43	44	42	44	46	47	47

Table F: Case statistics from Dili District Court for 2018
Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2017	2417	2405	2403	2427	2406	2378	2351	2313	2295	2262	2290	2285	2417
New cases	95	126	175	147	121	133	169	9	75	145	111	146	1452
Decision	107	128	151	168	149	160	207	27	108	117	116	67	1505
Total pending	2405	2403	2427	2406	2378	2351	2313	2295	2262	2290	2285	2364	2364

Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2017	658	672	694	734	735	740	734	762	759	775	778	794	658
New cases	21	32	48	10	18	15	45	2	20	22	33	36	302
Decision	7	10	8	9	13	21	17	5	4	19	17	10	140
Total pending	672	694	734	735	740	734	762	759	775	778	794	820	820

Table G: Case statistics from Baucau District Court for 2018
Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	443	471	444	466	452	427	421	367	367	385	352	322	443
New cases	54	33	64	38	26	60	36	0	38	30	33	44	456
Decision	26	60	42	52	51	66	90	0	20	63	63	52	585
Total pending	471	444	466	452	427	421	367	367	385	352	322	314	314

Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	216	219	211	216	216	214	214	215	216	225	232	234	216
New cases	5	9	13	13	6	7	10	1	13	12	13	5	107
Decision	2	17	15	6	8	7	9	0	4	5	11	5	89
Total pending	219	211	209	216	214	214	215	216	225	232	234	234	234

Table H : Case statistics from Suai District Court for 2017
Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	658	653	667	681	716	730	725	755	754	797	793	785	658
New cases	42	34	32	53	39	19	55	0	77	23	31	37	442
Decision	47	20	18	18	25	24	25	1	34	27	39	47	325
Total pending	653	667	681	716	730	725	755	754	797	793	785	775	775

Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	201	196	206	208	217	228	234	226	226	227	228	230	201
New cases	1	10	5	12	11	6	8	0	3	4	5	4	69

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Decision	6	0	3	3	0	0	16	0	2	3	3	6	42
Pending from 2017	196	206	208	217	228	234	226	226	227	228	230	228	228

Table I : Case statistics from Oecusse District Court for 2017
Criminal Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	128	120	140	188	198	178	194	179	179	196	205	219	128
New cases	13	23	68	43	14	29	22	0	17	38	53	10	330
Decision	21	3	20	33	34	13	37	0	0	29	39	17	246
Pending from 2017	120	140	188	198	178	194	179	179	196	205	219	212	212

Civil Cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Se p	Oct	Nov	Dec	Total
Pending from 2017	47	48	55	56	56	59	60	60	60	66	71	75	47
New cases	4	7	2	1	3	1	1	0	6	5	5	0	35
Decision	3	0	1	1	0	0	1	0	0	0	1	0	7
Pending from 2017	48	55	56	56	59	60	60	60	66	71	75	75	75

Annex B: CORRUPTION CASES MONITORED BY JSMP THAT REACHED FINAL DECISION IN 2018

Number of cases	Case Type	Name of defendant	Chronology	Decision
The Dili District Court				
0019/17.PNSI C	Active corruption - Article 294 of the PC	IRM	<p>The public prosecutor alleged that on 27 January 2017, at 1pm, the defendant was driving a car and committed a traffic offence. Therefore DX and his fellow police officers who were eating in a restaurant close to the scene immediately stopped the defendant and conducted a search. The defendant's driving licences needed to be updated and there were no registration documents for the vehicle. The defendant got out of the car and was holding two US\$5.00 notes in his hand to give to DX, but DX did not accept the money and immediately contacted a member of PNTL from the Dili District Traffic Unit in Kaikoli to come to the scene.</p> <p>The defendant was charged for committing active corruption (Article 294 of the PC)</p>	3 years in prison, suspended for 3 years.
0043/17. PGGCC	Misappropriation of public assets - Article 296 of the PC	Henrique da Costa	<p>The public prosecutor alleged that the defendant was a public servant at the National Directorate for State Assets within the Ministry of Finance who was responsible for auctions. As a public servant, the Ministry of Finance gave the defendant a Toyota car with the number plate 01-076G to use for operational purposes. On 3 March 2017, at approximately 11.00am, the defendant was driving this car and picked up some supporters of the Fretilin Party to attend presidential campaign activities for the presidential candidate Francisco Guterres Lu-Olo in Ermera Municipality. The defendant was driving the car without the knowledge of the Director of Logistics and Asset Management.</p>	6 months in prison, suspended for 1 year

			The defendant was charged for misappropriation of public assets (Article Artigu 296 of the PC)	
0021/15.PGG CC	Embezzlement and intentional mismanagement – Articles 295 and 274 of the PC	Luis de Fátima and Francisco Pereira do Rego	<p>The public prosecutor alleged that in 2014 the defendant Luis de Fátima was the treasurer at the Department of Revenue, Guido Valadares National Hospital, and the defendant Francisco Pereira do Rego was an administrator at the Guido Valadares National Hospital, and they used money collected through revenue at the hospital for their private interests. This revenue was obtained from the Special Nursing Ward/VIP rooms, radiology, acupuncture doctors, national health laboratory, gynaecology and obstetricians and room leased out for a canteen at the national hospital.</p> <p>In 2014 the national hospital received revenue totalling US\$99,905. This revenue is subject to Decree-Law No.01/2014 on Revenue, that states that the money must be deposited in the State's bank account and needs to be reported after 15 days. However, from the total revenue of US\$99,905 the defendant Luis de Fátima only deposited US\$24,900 to the State bank account and US\$75,405.35 was not deposited by the defendant.</p> <p>This money was not deposited and the defendant Luis de Fátima used the money to lend it to staff members of the national hospital and did not keep a list of the people who borrowed the money. Therefore the defendant does not remember the identity of these people. The defendant could only remember lending US\$12,000 to the defendant Francisco do Rego and the money was used for private interests.</p>	<p>5 years in prison and civil compensation of US\$ 38,000 against the defendant Francisco Pereira.</p> <p>The defendant Luis de Fátima was sentenced to 2 years 6 months in prison, suspended for 3 years, and ordered to pay civil compensation of US\$ 2,000 but because he had already given back US\$1,600 he was required to immediately pay US\$ 400.</p>

			The defendant was charged for committing embezzlement and intentional mismanagement (Articles 295 and 274 of the Penal Code)	
2045/10.PDD IL	Abuse of power and economic involvement in business - Article 299 of the PC	Lucia Lobato and Helena Madeira Gomes	<p>The public prosecutor alleged that two defendants conspired by collaborating to gain an advantage from a rehabilitation project of rooms at the Gleno prison in 2007. The two defendants caused the State to suffer a loss of US \$ 406,000.</p> <p>The prosecution stated that the two defendants came up with a plan for rehabilitating Gleno Prison using single source procurement which was not included in the 2007 budget plan. The single source procurement for the rehabilitation of Gleno Prison was done three times and the total budget was US\$ 500,000.</p> <p>The prosecution also alleged that the project had no design, no Bill of Quantity (BoQ) and no technical expertise from technicians at the Ministry of Public Works including verification of the design and rehabilitation process. Therefore, the two defendants violated Decree-Law 10/2005 on Judicial Regime for Procurement which states that when the value of a project is higher than US \$100,000 a public tender must be used. However, when a project uses single source procurement, justification must be provided about the why this project is urgent.</p> <p>Also, the prosecution alleged that there were strong indications that the defendant Lucia Lobato also conspired with the United Geral Construction company because she was suspected of being related to the company owner.</p>	<p>Lucia Lobato received three years in prison, suspended for five years and was ordered to pay civil compensation of US\$ 124,862.59 as well as court costs of US\$ 200.00.</p> <p>The defendant Helena Madeira was sentenced to two years in prison, suspended for three years, and ordered to pay civil compensation of US\$ 92,167.20.</p>

			The defendant was charged with committed the crime of economic participation in business (Article 299 of the PC) The prosecution also recommended for the defendants to pay civil compensation to the State totalling US\$ 500,000.	
0035/15.PGC C	Embezzlement, misappropriation of public assets, intentional mismanagement and forgery of documents or technical report - Articles 295, 274, 296 and 303	Gastão de Sousa, Diogo da Costa, Martinho Gusmão, Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa Sousa	<p>The public prosecutor alleged that on 28 February 2010, the Timor-Leste Government signed an agreement with the Asia Development Bank (ADB) to carry out a funding project with a total budget of US\$ 46,000,000.</p> <p>This project allocated funding for the rehabilitation and construction of roads in Liquica and Batugadé. The project ended in 2012 and US\$ 82,776.77 of unused money needed to be returned, together with eight vehicles.</p> <p>The Ministry of Public Works received two vehicles, a Toyota Land Cruiser with the number plate 18-948 TLS, and Toyota Kijang Innova with the number plate 19-754 TLS, which were given to the defendant Diogo da Costa as the Office Chief of the Ministry of Public Works.</p> <p>In reality information only was provided about two other vehicles, namely a Toyota Rav4 with the number plate 18-723 TLS, and a Toyota Land Cruiser Prado with the number plate 18-947TLS.</p> <p>After receiving these vehicles, according to a verbal instruction given by the defendant Gastão de Sousa, the Department of Logistics at the Ministry of Public Works, was not informed about these vehicles. The agreement and collaboration was aimed at removing the registration of these two vehicles, which were assets belonging to the State.</p> <p>On 24 September 2012 the defendant Gastão de Sousa</p>	<p>The court issued a single sentence against the defendant Gastão de Sousa of 2 years and 6 months in prison, suspended for 2 years and 6 months. The court acquitted him from the crime of intentional mismanagement. The court also ordered the defendant Gastão Sousa to pay civil compensation to the State totalling US\$ 532.34 and US\$ 1,733.92.</p> <p>The court also ordered the defendant Gastão to pay court costs of US\$ 200.</p> <p>The court sentenced the defendant Diogo de</p>

		<p>communicated with the ADB about his decision to allocate two vehicles with the number plates 18-948 and 19-754 to the Management Project Unit, including maintenance and fuel supplies financed by ADB, but in reality the vehicle with the number plate 18-948 was kept at the home of the defendant Gastão de Sousa in Bekusi Karaik Sub-Village, Becora Village.</p> <p>The defendant Gastão de Sousa also allowed his two sons Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa to use this car for private purposes and they forged his signature to fill up fuel from Tiger Fuel and used the vehicle to drive around Dili. The defendant Gastão de Sousa also allowed the defendant Diogo da Costa to twice perform maintenance on the car with the number plate 18-948 using ADB money.</p> <p>On an unspecified date in May 2014, the defendant Martinho Gusmão made a verbal request for the defendant Gastão de Sousa to request a vehicle to make preparations for a ceremony commemorating 200 years of the Manatuto Parish and 13 May 2014. The defendant Gastão de Sausa personally handed over the car with the number plate 19-754 TLS that was used for private purposes by the defendant Diogo da Costa.</p> <p>The defendant Martinho Gusmão used this vehicle for 1 year and 3 months and when he used the vehicle the defendant Martinho Gusmão twice requested for the defendant Gastão de Sousa to perform maintenance on this vehicle using funds from ADB totalling US\$ 532.34.</p> <p>The indictment stated that these goods and equipment belonged to the State; however the defendants took advantage of public property for personal gain even though they knew that their acts would</p>	<p>Costa to 1 year and 6 months in prison, suspended for 1 year and 6 months. The court acquitted the defendant Martinho Gusmão.</p> <p>The court also acquitted the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi da Sousa as co-perpetrators of the crime of embezzlement.</p>
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			<p>disadvantage the State.</p> <p>The public prosecutor alleged that the defendant Gastão de Sousa violated Article 295 of the Penal Code on embezzlement and Article 274 of the Penal Code on intentional mismanagement.</p> <p>The defendant Diogo da Costa was charged by the prosecutor for violating Article 295 of the Penal Code on embezzlement and the crime of misappropriation of public assets (Article 296) and Article 303 (a) of the Penal Code on forgery of documents or technical report.</p> <p>The defendant Martinho Gusmão was charged by the prosecutor for being complicit in the crime of intentional mismanagement (Article 274 of the PC). The defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa were charged by the prosecutor as co-perpetrators of the crime of embezzlement (Article 295).</p>	
0029/15.PGG CC	Intentional mismanagement and Abuse of power – Article 274 (1) and 297 of the PC	Santina Jose Rodrigues Ferreira Viegas Cardoso	<p>The public prosecutor alleged that in July 2014 the Minister of Finance, Emilia Pires, was charged by the Public Prosecution Service for committing the crime of economic participation in business and intentional mismanagement, registered by the court as Case No. NUC. 1212/12.PDDIL.</p> <p>The public prosecutor charged the defendant Emilia Pires because there was sufficient evidence that she committed the crime of economic participation in business and intentional mismanagement which caused the State of Timor-Leste to suffer a considerable loss. The Public Prosecutor requested for Emilia Pires to be held accountable for criminal and civil offences if proven guilty of committing these crimes. Because she believed that these charges were not true, on 4 August 2014 the Minister of Finance Emilia Pires made a public statement via a press conference to reject the</p>	<p>Acquitted the defendant from the crime of abuse of power and for the crime of intentional mismanagement and ordered the defendant to pay a fine of US\$ 600 to be paid in daily instalments of US\$ 5 for 120 days. In addition, the court also ordered the defendant to pay court costs of US\$ 100.</p>

		<p>charges.</p> <p>In addition to the press conference the defendant Emilia Pires also sent a statement denying these charges using a letterhead from the Ministry of Planning and Finance to the newspapers to publish her statement in the form of an official announcement. The Timor Post, STL and Independente newspapers published this statement on 7 August 2014. The Business Timor newspaper published this statement between 11 – 17 August 2014.</p> <p>Over the next few days these newspaper sent their invoices to the Ministry of Planning and Finance. The STL newspaper submitted an invoice for \$700.00, the Independente newspaper sent an invoice for US\$300, the Timor Post newspaper sent an invoice for US\$300 and the Business Timor newspaper sent an invoice for US\$600. The Defendant Santana Cardoso authorised his sub-ordinates to prepare a CPV for these invoices.</p> <p>On 12 July August 2014 the Ministry of Finance prepared a CPV for the Independent newspaper which was signed by Martinho Lopes, as the Director of Administration and Finance, which was certified by Norberta da Costa as the Director General at the Ministry of Finance and on 14 August 2014, this was approved by the Vice Minister, the defendant Santana Cardoso. On 22 August 2014 the Ministry of Finance continued processing the CPV and paid the STL newspaper and on 5 September 2014 it approved the CPV and paid the Timor Post newspaper. US\$ 1,900.00 was paid to these newspapers.</p> <p>The public prosecutor stated that the announcement made by the Minister of Finance Emilia Pires in the newspapers against the charges of the public prosecutor were not in the common interests of the Ministry of Planning and Finance nor the State of Timor-Leste.</p>	
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			<p>However, the defendant Santana Cardoso, who was the Vice Minister of Finance, gave authorisation to take the money from the Timor-Leste State Budget and approved the payment for the defence of Emilia Pires.</p> <p>The public prosecutor stated that the defendant knew that the charges were against Emilia Pires and not against the Ministry of Planning and Finance. These criminal charges were against an individual and not charges against an institution or the State.</p> <p>The defendant Santana Jose Rodrigues Ferreira Viegas Cardoso used her position as the Vice Minister for Planning and Finance to abuse her power and violated her obligations. The defendant authorised her sub-ordinates to process payments for the newspapers that published the personal statement of Emilia Pires to provide illegitimate benefits to Emilia Pires and caused the State of Timor-Leste to lose US\$1,900.</p> <p>The defendant was charged with intentional mismanagement and abuse of power (Article 274 (1) and 297 of the PC)</p>	
0046/15.PNG CC	Mismanagement of public funds and abuse of power (Articles 319 and 297 of the PC)	Antonio Lelo Tasi	<p>The prosecutor alleged that in 2015 the defendant made a decision to award a contract to the UDA Karya company to transport dirty oil from Hera to Tibar. This agreement mentioned a payment during the initial phase of US\$160 for each vehicle and for the second phase in 2016 the payment would increase to US\$250 for each vehicle. The total payments amounted to US\$ 9,300 and this money was kept in the safe of the Ministry of Commerce and Industry in 2015 and 2016.</p> <p>At some time in 2016 the defendant gave an order to his staff member Carlos Conceição to take out US\$ 600 to provide support for</p>	Prison sentence of two years, suspended for three years, and ordered to pay the State US\$ 600.

			<p>a funeral ceremony for a staff member of the Ministry of Commerce and Industry who passed away at that time. The defendant gave the money to Public Prosecution Service when the Anti-Corruption Commission started investigating this matter.</p> <p>The prosecutor stated that the defendant had knowledge about the Procurement Law which meant he should not have authorised this contract because the Ministry of Commerce and Industry is not one of the institutions that provides receipts to the State. What is worse is that the money was kept in a safe for a long time and the defendant used it for other activities.</p> <p>The defendant was charged with committing the crime of mismanagement of public funds (Article 316.1 of the PC) and the crime of abuse of power (Article 297 of the PC) and ordered by the court to pay civil compensation to State totalling US\$ 600.</p>	
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The Oecusse District Court

0014/16.PDO EC	Embezzlement - Article 295 of the PC	Victor Rodrigues Teme and João da Costa	<p>The public prosecutor alleged that in 2013 the National Directorate of Land Transport (DNTT) issued its annual report on revenue from violations of the Traffic Code from the Districts of Dili, Baucau, Manufahi, Bobonaro and Oecusse from January until December 2013 and the Oecusse Region totalling US\$3,756. The annual report from the Oecusse Traffic Police on violations of the Traffic Code stated that based on invoices there was revenue totalling US\$4,597,15 from motorcycle infractions. There was a discrepancy between the DNTT report and the Oecusse Traffic Police report which caused the State of Timor-Leste to suffer a loss.</p> <p>The defendant was charged with committing the crime of embezzlement (Article 295 of the PC)</p>	Defendant sentenced to 1 year in prison, suspended for 1 year
0068/18.OES IC	Misappropriation of public assets - Article 296 of the PC	Beatos Teme	<p>The public prosecutor alleged that on 25 April 2018, at approximately 2.30pm, the defendant was using a Honda Mega-Pro motorcycle belonging to the State with the number plate 6127.G to participate in an election campaign for the early elections.</p> <p>The defendant was charged with committing the crime of misappropriation of public assets (Article 296 of the PC)</p>	The court sentenced the defendant to 3 months in prison, suspended for 1 year, and ordered the defendant to pay court costs of US\$ 30.