



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Press Release

Dili, 6 July 2018

JSMP holds meeting with the Prosecutor General and discusses its findings from the 2017 Overview of the Justice Sector Report

On Thursday 5 July 2018 JSMP held a meeting with the Prosecutor General and discussed its findings from the 2017 Overview of the Justice Sector Report at the Office of the Prosecutor General in Colmera, Dili.

"JSMP has tried all means possible to transmit its findings to key institutions in the justice sector and has engaged in a range of efforts to contribute to the development of Timor-Leste's justice sector to make it strong and to guarantee justice for all", said the Executive Director of JSMP, Luis de Oliveira Sampaio.

During this meeting JSMP presented and emphasised the results of court monitoring and recommended for the Office of the Prosecutor General to convey its findings to public prosecutors for consideration in the judicial process in the future. These issues included:

1. Suspended sentences with rules of conduct in cases of domestic violence

Most cases of domestic violence (DV) continue to result in suspended sentences. Suspended sentences often have no effect or no "deterrent effect" on defendants/convicted persons because defendants believe that a suspended sentence is not a punishment.

To deal with this matter, JSMP has advised that when making final recommendations in DV cases the Public Prosecution Service can request for the court to apply suspended sentences with obligations (pursuant to Article 69) and rules of conduct (Article 70) of the Penal Code.

2. Guidelines on preparing charges in cases of gender based violence (GBV) – DV

JSMP has observed that often prosecutors are inconsistent in their selection of relevant provisions of the Penal Code in domestic violence cases. In many cases they charge the crime of simple offences against physical integrity (Article 145 of the Penal Code), and sometimes they charge the crime of mistreatment of a spouse (Article 154 of the Penal Code). This situation has negative implications on the victim's rights because prosecutors are free to choose articles based on their preference without examining the complexity and nature of each case.

Therefore JSMP has requested for the Public Prosecution Service to develop legal guidelines that explain the key elements of articles 145, 146 and 154 of the Penal Code, and provide some

examples of cases that use the correct article to charge defendants, and to provide clear guidelines on sentencing where prosecutors should make recommendations based on the circumstances in each case.

3. Withdrawal of complaints before the Public Prosecution Service and the Court

In many cases JSMP has observed that complaints have been withdrawn in cases involving semi-public crimes, which always happens in court. Article 216 (3) of the Criminal Procedure Code states that the Public Prosecutor Service can also validate desistance and endorse this process when it has knowledge.

JSMP believes that it is important for the Public Prosecution Service to clearly explain the details of this process and the possible outcome if the parties continue to take the matter to court so that they are well-informed before they decide to take a matter to court.

This will help to reduce the pending cases at the courts and the Public Prosecution Service (rather than wasting time preparing charges, going to court and having a settlement validated) unless the parties don't want to validate the withdrawal.

4. Civil compensation for serious gender based violence

Normally civil matters take a long time without providing any certainty for the parties, therefore JSMP believes that because the law allows it, the Public Prosecution Service can include a request for civil compensation in its charges for cases that have harmed victims or placed an additional burden on victims (for example defendants who have committed the crime of sexual abuse against minors who are physically disabled and they have become pregnant and have given birth).

Article 72.2 (a, b, and c) of the Criminal Procedure Code on procedural positions provides for this option and the Public Prosecution Service can include a request with the criminal charges in its indictment.

5. Charges for crimes involving minors

In practice JSMP has found that in most cases involving minors the Public Prosecution Service only charges the crime of simple offence against physical integrity together with Article 35 of the Law Against Domestic Violence.

JSMP believes that the most specific article in cases involving minors is Article 155 of the Penal Code on the mistreatment of a minor.

6. Fines and requirements of Article 36 of the Law Against Domestic Violence

JSMP has observed and found that the Public Prosecution Service also often requests that fines be imposed in cases of domestic violence and the courts accept this and impose fines without

consideration or compliance with the requirements of Article 36 of the Law Against Domestic Violence:

Article 36 of the Law Against Domestic Violence states that the Court can substitute a prison sentence with a fine, to:

1. Guarantee the security of the victim;
2. The defendant is ready to accept treatment or monitoring from support services for victims; and
3. To preserve family unity.

7. Accessibility of trials at the Court of Appeal

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

JSMP believes that to ensure that all people understand the process and their respective interests in each case, and at the very least the announcement of the decision, the Court of Appeal needs to make the hearing to announce the decision open to the public, especially for the interested parties. This will help the parties to receive clear and credible information relating to the decision and considerations of the court in each case.

The Prosecutor General was appreciative and happily accepted the issues presented by JSMP and will seek a way to discuss them with prosecutors. The Prosecutor General emphasised that when he started his mandate he introduced a mechanism to distribute the work of public prosecutors to ensure that everyone can work in a responsible and professional manner. It should not be the case that some prosecutors are burdened with too much work, whilst others only have a normal amount or just do what they want. Therefore the Prosecutor General applies or imposes disciplinary measures on prosecutors who have poor work performance or are involved in other functional irregularities.

The Prosecutor General said that he always encourages his prosecutors to work in a professional manner, to work wholeheartedly, and in particular to have a sense of “institutional pride” and uphold the confidence and responsibility given to them by the State and the people to represent the people and the State in defending legality in accordance with the law.

The Prosecutor General recognised that the justice sector is still facing a range of challenges and in particular he expressed his serious concerns about failures to apply coercive measures for important crimes and finally against those who abscond from justice. Therefore he was happy to accept the ideas and thought of all entities, especially JSMP who has been closely following developments in the justice sector to further improve the justice system in Timor-Leste.

This meeting ended with the submission of the 2017 Overview of the Justice Sector report, the 2017 National Parliamentary Watch Report and the JSMP 2017 institutional report.

There is a plan to hold a similar meeting with the President of the Court of Appeal in the next few weeks, depending on the availability of the President of the Court of Appeal.

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