



Press Release
The Dili District Court
29 September 2020

University students ordered to pay a fine:
JSMP believes that the court's decision is inappropriate

JSMP believes that the decision of the Dili District Court to issue fines against 32 defendants who are university students for the crime of disobedience is inappropriate. The students demanded that the State waive fees during the implementation of the State of Emergency (COVID-19) because they are facing financial problems.

On the 15th and the 18th September 2020 the Dili District Court conducted a hearing to announce its decision in a case of disobedience involving 32 defendants and ordered the defendants to pay a fine of US\$45.00, whereby each defendant must pay US\$1.00 per day for 45 days. If the defendants do not pay this fine, then they will have to serve 30 days in prison as an alternative punishment.

“JSMP believes that the decision to fine these students is inappropriate because it does not reflect their circumstances as students who are facing financial problems,” said the Executive Director of JSMP, Ms. Ana Paula Marçal.

The main objective of a penalty is to deter, educate, repress (sanction) and rehabilitate the defendant and society to prevent crimes and change behaviour in families and society. Therefore, JSMP believes that if the objective of the penalty is to improve or change a person's behaviour, then the penalty applied by the court should be fair and reflect the socio-economic circumstances and capacity of the convicted person.

The Timor-Leste Penal Code provides four main types of penalties, namely prison sentence, fine, community work and admonishment. The court can select from these penalties in accordance with the law or the conviction of the judges based on the proven facts and all of the circumstances surrounding a crime when applying a penalty against defendants.

JSMP understands that the court provides the identifying elements of the defendant pursuant to Article 281. 1 (a) of the Criminal Procedure Code on elements required for a sentence. In addition to the defendant's identity, occupation and income, the court should also find out the defendant's economic or social circumstances with the aim of

considering these circumstances in order to apply an appropriate sentence against the defendant.

However, in this case, after providing the identifying elements, including the economic and social circumstances of the defendants, the court knew that the defendants were demonstrating to demand that the State provide them with a subsidy because they are facing economic hardship to pay for their schooling, just like students overseas, but in the end the court issued a fine ordering the defendants to pay money to the State.

When announcing its sentence the court found that defendants guilty of committing the crime of disobedience, because the students did not hold a demonstration in front of UNTL which was allowed by the security forces (PNTL), but rather in front of the Ministry of Higher Education, Science and Culture (MESSK) in Colmera, therefore the police detained the students at the Caicoli police cells and held summary proceedings. In the end the court ordered each defendant to pay a fine of US\$45.00 to the State in daily instalments of US\$1.00 for 45 days. If the defendants do not pay the fine, they will have to serve 30 days in prison as an alternative sentence.

The Spokesperson of the University Alliance did not agree with the decision to issue a fine because most of the students taken to court do not come from families that are in a strong economic position. At that time the students wanted the State to treat them the same as students overseas and waive their fees during the State of Emergency¹.

Also, JSMP has questioned the decision to issue a fine for crimes characterized as domestic violence. Therefore, in 2015 JSMP published a report entitled '[The application of alternative sentences in cases of domestic violence at the Oecusse District Court-2015](#)².

In that report JSMP reported that economic circumstances are just one of the many factors that contribute to incidents of domestic violence. In some cases, victims suffer economic violence together with physical violence. For example, in one case a defendant said he hit his wife because the victim used US \$20 without his approval. In this case, it is clear that the defendant wanted to control money in the home and used physical violence as a form of control. In the other case monitored by JSMP, it is clear that a family's weak economic circumstances can create tension and can contribute to

¹ On 23 September 2020 JSMP spoke to the Spokesperson of the University Alliance and three other students about their feelings regarding the decision of the court to order the 32 students to pay a fine.

² JSMP Report: https://jsmp.tl/wp-content/uploads/2012/05/FINAL_JSMP_Sentensa-alternativa_TDO_Nov-20151.pdf

incidents of domestic violence. Even though financial circumstances lead to violence, the courts still decide to impose fines on defendants.

JSMP is concerned with the application of fines without more careful consideration about the circumstances of the victim. Therefore, JSMP recommends that the courts need to be careful when considering the substitution of a prison sentence with a fine if the fine might cause financial difficulties for the victim or the victim's children in cases of domestic violence. In most cases of domestic violence, the victim continues to live with the defendant and a fine can have a negative impact on the victim and her children. This can deter victims from making a complaint to the court.

In that report JSMP also included the thoughts of 3 victims of domestic violence about the issuance of fines by the Oecusse District Court. The victims said that fines create financial difficulties for the family and they were unhappy with the application of fines in their cases because they would have to help their husbands (the defendants) find money to pay the fine.

Regarding the recent case involving the students, the defence will lodge an appeal because of dissatisfaction with the decision of the court of first instance to order the defendants to pay a fine of US\$45.00. JSMP hopes that the Court of Appeal will consider all of the circumstances and issue an appropriate decision against the defendants who were demanding for the State to waive their semester fees.

This case was registered by the court as Case No. 0198/20 DIDIL, Case No 0199/20 DIDIL. The sentence was announced by single judge Maria Solana. The Public Prosecution Service was represented by prosecutor Ricardo Godinho and the defendants were represented by private lawyer Marito da Silva.

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