



**Press Release**  
**Dili District Court**  
**7 June 2019**

**The courts have sent defendants to prison who cannot be held responsible due to psychological disturbance: JSMP requests for the Government to establish appropriate facilities for defendants who suffer a psychological disturbance**

JSMP has observed that during the last couple of months the Dili District Court has continued to send defendants to prison who are incapacitated due to a psychological disturbance. According to the law, defendants like this are excluded from criminal responsibility because they cannot be held accountable.

On 7 April 2019 the Dili District Court conducted a hearing to announce its decision in a case of aggravated homicide involving the defendant NF who allegedly committed the offence against his child and wife, in Liquica District. The court found that the defendant was suffering a mental illness<sup>1</sup> when he committed this crime but the court still sent the defendant to prison for three years. The court decided to send the defendant back to prison to guarantee that the defendant can receive medical treatment until he recovers from this illness.

Also previously on 12 February 2019 the Dili District Court issued a similar decision against the defendant PE for the crime of simple offence against physical integrity characterized as domestic violence and imposed an effective sentence of 1 year in prison against the defendant.<sup>2</sup>

“The decisions issued in these two cases could potentially violate the general rules and principles of the criminal law, particularly regarding exemption from criminal responsibility for those who suffer a mental illness at the time they commit a crime,” said the Executive Director of JSMP, Luis de Oliveira Sampaio.

Article 21 (1) and (2) of the Penal Code on *exemption from criminal liability by reason of insanity* state that:

*(1) A person is exempt from criminal liability if, due to a mental disorder, he or she is incapable, at the time of committing the act, to comprehend its unlawfulness or to decide accordingly.*

*2. A person may be declared exempt from criminal liability when, by force of a mental disorder, has, at the time the crime is committed, significantly diminished capacity to appreciate the unlawfulness of such an act or to act accordingly.*

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<sup>1</sup> Based on the statement of the victim and the medical report of a doctor who specialises in mental illness.

<sup>2</sup> For more detailed information please refer to the Dili District Court Case Summary for February 2019 available on the JSMP website.

JSMP understands that currently there are no appropriate facilities for persons who are mentally ill; however a prison is not an appropriate place for persons who are mentally ill to receive treatment for their health.

JSMP believes that in such circumstances, especially because there are many shortcomings, the judges have to make difficult decisions based on the requirements of each case. However, this does not mean that judges can make decisions that are not in accordance with the law. Even though these decisions issued by judges stated that the defendants were being sent to prison for treatment until such time that they can recover, the time limit imposed of three years or one year gives the impression that the defendants are being convicted, rather than being given treatment. How can a judge predict that in one or three years' time a defendant will be able to recover from a mental illness? Literally speaking, prison is a place to punish convicted persons, and not a place to treat sick people.

JSMP understands that the courts have decided to send defendants to prison because they might pose a risk to others if reintegrated in society. However, JSMP believes that prison is not the place for these defendants, because their condition is such that they need a suitable place that is quiet, friendly and accessible. Also, such a place should allow families to visit freely and for health professionals to provide regular treatment and counselling to help defendants recover quickly.

JSMP believes that this situation has emerged because the relevant ministries such as the Ministry of Health and Ministry of Social Solidarity have failed to identify the special circumstances in cases like this. Until now the government has not yet established a clinic or appropriate place for patients suffering a mental illness, especially those suffering serious conditions. Even though there is a doctor who specialises in dealing with patients who suffer a mental illness, this is not the same as those suffering from a serious condition. A concrete example is that many mentally ill persons are now moving around in the community and they pose a potential risk and threaten the people's security in society.

In cases with specific circumstances like this, when a judge is going to make a decision, it is necessary to hear the opinion of, and consult with, health professionals and officers from the Minister of Social Solidarity to find a collective solution based on the requirements of each case. The court needs to avoid predicting or interpreting such circumstance that fall beyond their professional competence.

JSMP recommends for the Government to establish specific and appropriate facilities such as these to avoid putting judges in such a difficult position.

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