



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

## Overview of the Justice Sector in Timor-Leste 2010



March 2011



JUSTICE FACILITY  
Serbisu hamutuk bilaterál entre  
Governu Timor-Leste no Austrália  
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## **Executive Summary**

Developing the justice sector in 2010 was a core priority for the government of Timor-Leste after the 2006 crisis. Therefore, JSMP wishes to congratulate all parties who have worked to move this sector forward.

JSMP acknowledges that the courts have made several achievements, however the justice system continued to face a range of obstacles in 2010. For example, there were substantial issues relating to the judicial process for important cases, female victims still experienced a number of challenges in obtaining justice in their cases, the law on witness protection is yet to be implemented because of insufficient resources, the Portuguese language continues to be an impediment for members of the community wishing to access the formal justice system, there is a lack of human resources and other issues.

JSMP hopes that this report can provide information to the public about what things should be maintained in the future and what things need to be improved or addressed in 2011, to enable the state to guarantee the basic principles of a democratic nation.

Based on the analysis provided throughout this report JSMP has prepared the following 25 recommendations as issues that need to be addressed in the future:

1. Court actors should reflect on major cases such as the 11 February 2008 case and its implications on the justice system, and in particular how to obtain relevant evidence of high quality to reveal the truth in future cases.
2. All court actors should carefully examine the problems that emerged during the trial of the case relating to the attack on the residence of Brigadier General Taur Matan Ruak (now Major General of F-FDTL) to avoid unnecessary retrials of other cases in the future. The Court of Appeal should publish its internal rules so that everyone can know the basis for any decision issued by the Court of Appeal.
3. In cases involving the military, such as the Fatu Ahi case, the court should issue a rule or guideline prohibiting members of the military from attending the court in military uniform or carrying guns, pistols or ammunition.
4. If a witness or other party attending the court fails to respect the court then the judge must take specific action to force everyone to obey the court.
5. The government must make available the facilities and resources necessary to provide assistance to victims so that the Law Against Domestic Violence can be implemented effectively.
6. The government and donor institutions should implement training programs for those actors who are required to ensure the implementation of the Law Against Domestic Violence, such as health professionals, doctors, lawyers and police, and judges so that they have a sufficient understanding of this law and issues of gender sensitivity.
7. The government should organize a public awareness campaign about the Law Against Domestic Violence so that everyone can understand and be aware that gender based violence and domestic violence should not just be considered as normal behaviour between spouses.
8. The government and the National Parliament should provide Tetum translations of all draft laws so that everyone that will be affected by a particular draft law can have an opportunity to comment and share their opinion on that law.

9. The Ministry of Justice should form a working group to help develop Juvenile Justice laws that are appropriate and relevant to the circumstance of Timor-Leste that are based on human rights principles and the rights of the child.
10. The Ministry of Justice should promptly finalize the draft law on Legal Aid and submit it to the National Parliament to be approved. After its approval the government should allocate sufficient funds so that this crucial law can be implemented to enable many people to have access to the courts.
11. Before approving the draft Civil Code, the National Parliament should engage in a comprehensive and substantial consultation process so that the law will reflect the real circumstances in Timor-Leste. In order to conduct this consultation process and revise this draft law the National Parliament should establish a committee with a strong and comprehensive mandate.
12. The President is asked to refrain from granting widespread pardons to everyone, and any pardons given should be based on consultation with the government and on the specific conditions of each case.
13. The Government should draft an organic law to deal with the granting of pardons to avoid future controversy when the President uses his authority to grant pardons to convicted persons.
14. The Ministry of Justice should draft a policy to encourage female law graduates to participate in the selection process for entry into the Judicial Training Centre and ensure that the legal profession is free from discrimination.
15. The government and the courts should provide adequate material assistance to implement the recently approved Law on Witness Protection so that victims of gender based violence and witnesses can have their safety guaranteed when they seek justice and so that the justice system can move forward.
16. The National Parliament should improve the Criminal Procedure Code by granting greater discretion to judges to not apply Article 125 in cases of domestic violence so that judges can compel witnesses who are family members of a defendant to provide testimony in cases such as this.
17. The Ministry of Justice and the courts should increase the number of court actors in all jurisdictions, especially the Baucau, Suai and Oecusse District Courts. This includes increasing the number of judges so that each of the district courts can try cases before a panel of judges (at least three judges in each court). It is also necessary to increase the number of prosecutors, public defenders, court clerks and officials.
18. The Ministry of Justice and the courts should also increase the number of interpreters fluent in Portuguese and Tetum as well as interpreters for regional languages in each jurisdiction so that everyone can obtain justice. Interpreters should also be provided to the Prosecution Service and the Public Defenders Office to help them to provide interpreting in all jurisdictions.
19. The Superior Council of Judicial Magistrates (Court) must establish a definite schedule on the recruitment of international judges, to prevent a recurrence of the problems encountered in 2010 where a number of international judges finished their contracts before new judges could be appointed, and this will ensure that national judges will receive the help that they need.

20. The government must pay attention to the accommodation constructed in 2010 to house court actors, because additional facilities are required to enable court actors to reside permanently in each jurisdiction and to prevent them from having to travel back and forth to/from Dili.
21. The government must provide adequate facilities in each Public Defenders Office (for example, internet, electricity) to guarantee that public defenders have appropriate conditions to enable them to provide legal representation to the community and facilitate access to legal information via the internet or other resources.
22. It is hoped that each court can continue to operate a mobile court service in each jurisdiction, as has been carried out by the Baucau and Suai District Courts, to bring justice closer to the people and to disseminate legal information to the community in isolated areas.
23. The government should provide language training to court clerks and other court actors so they can develop an adequate understanding of the legal process, especially to improve their capacity in the Portuguese language, and therefore assist them in their day to day work.
24. The courts should issue summons and other legal documents in the two national languages (Tetum and Portuguese) as well as in languages that can be understood by the person receiving the summons (for example in local languages). The courts have the responsibility to publish all documents (for example final decisions) in the two official languages of the state so that everyone can access these documents.
25. The courts should implement the case management system that has been designed already. The courts should also develop a policy on access to all information from the court to provide proper access to those entitled to receive the necessary documentation, which will increase the transparency of the court system.

## Acronyms

CFJ	<i>Centro de Fomação Judisario</i> (Judicial Training Centre)
DP	<i>Defensoria Públiku</i> (Public Defenders Office)
EDTL	<i>Eletricidade de Timor-Leste</i> (Timor-Leste Electricity Supply)
F-FDTL	<i>Falintil Forsa Defeza Timor-Leste</i> (Timor-Leste Defence Force)
ICCPR	International Convention on Civil and Political Rights
KSMJ	<i>Konsellu Superiór Majistradu Justisa</i> (Superior Council of Judicial Magistrates)
LRU	Legal Research Unit
MSS	<i>Ministériu Solidariedade Sociál</i> (Ministry of Social Solidarity)
MP	<i>Ministériu Públiku</i> (Public Prosecution Service)
PNTL:	<i>Polísia Nasionál Timor-Leste</i> (National Police of Timor-Leste)
UNDP:	United Nations Development Program
UNMIT	United Nations Mission in Timor-Leste
VPU	Vulnerable Persons Unit
VSS	Victim Support Service
WJU	Women's Justice Unit

# 1. Introduction

2010 was a landmark year for the Timor-Leste justice system. Several important cases were processed and settled by the courts, for example the *11 February 2008 case*, the *attack on the residence of Brigadier General Taur Matan Ruak case* and the *Fatu Ahi case*. Several important laws were approved, for example the Law Against Domestic Violence and other draft laws are still being prepared, for example the Law on Juvenile Justice, draft Law on Legal Aid, and draft Civil Code. In addition, there was the issue of pardons which generated controversy within the community.

JSMP wishes to congratulate all court actors who performed difficult tasks throughout the year and continued to establish good cooperation with JSMP to strengthen the justice system in this country.

Similar to previous years, the Overview of the Justice Sector report has the following three goals:

- To provide information to the public so they can keep abreast of developments and challenges experienced by the Timor-Leste justice system in 2010;
- To analyze the real circumstances that exist within the Timor-Leste justice system, to provide commentary, proposals and criticism of relevant issues, and
- To provide recommendations on priorities for 2011 and to identify what things should be maintained in the future.

JSMP acknowledges that it is not possible to note all of the important events that took place during 2010. However, JSMP believes that the information set out in this report reflects the important events that were monitored by JSMP in 2010.

JSMP hopes that this report will highlight what things need to be improved and addressed in 2011, so that this country can guarantee the basic principles of the democratic nation.

This report is set out as follows:

- Section 2 discusses developments that took place in the justice sector during 2010, including important cases, laws that were approved, draft laws from the government and the National Parliament which are currently being developed, as well as a number of other issues;
- Section 3 carefully examines the position of women in the justice sector in 2010, especially in relation to their experience as victims of gender based violence, the position of female court actors, the progress of the Law on Witness Protection, and existing concerns with the application of Article 125 of the Criminal Procedure Code;
- Section 4 summarizes developments that occurred in 2010 within the courts, the prosecution service and public defenders office, including human resources, facilities, developments in cases and other challenges;
- Section 5 contains JSMP's Conclusions and Recommendations for all stakeholders to improve the justice system so that it can operate more effectively in the future.

## 2. Important developments in the justice system in 2010

In 2010 there were many important developments in the justice system that require analysis and reflection. These included the following issues:

- The Courts processed three important cases relating to the 2006 crisis;
- The Law Against Domestic Violence was approved by the National Parliament;
- Three draft laws that will have a major impact on the justice system continued to be developed; and
- Other issues arose, for example pardons.

This section of the report is aimed at providing a general summary of these issues to help establish an approach for developing the justice system in 2011.

### a) The 11 February 2008 Case

In 2010 the Dili District Court tried a very important case in the judicial history of Timor-Leste, namely the 11 February 2008 case. This case concerned events that threatened the political and social stability of Timor-Leste after the 2006 crisis. The outcome of this case is extremely important for the people of Timor-Leste and the international community because at the time of the incident, the leader of the petitioners, together with the deceased Major Alfredo Reinado Alves, were strongly suspected of launching an attempt to take the life of the President Jose Manuel Ramos Horta and ambush the Prime Minister Jose Alexandre Xanana Gusmão.

On 10 February 2011 JSMP launched a substantive report that explained and analyzed this important case.<sup>1</sup> Therefore, in this Overview of the Justice Sector report JSMP only wishes to summarize developments and challenges within the justice system in Timor-Leste, especially regarding issues that are being questioned to date. JSMP congratulates the court and other judicial actors who have worked hard to process this case. However JSMP also has the following concerns:

- Even though the trial and investigative process took a long time, the community still do not know what happened in this case, in particular who injured the President and who killed Alfredo Reinado Alves and Leopoldino Exposto;
- The investigation and trial took a long time and this was partially caused by a lack of adequate resources;
- The defendants did not have access to information or sufficient time to prepare their defence. This is in violation of Article 14(3)(b) of the ICCPR; a treaty that has been ratified by Timor-Leste;
- Those participating in the trial were not given sufficient protection, especially the defendants who did not feel comfortable speaking when witnesses from the F-FDTL were present in court;
- The witnesses did not provide consistent testimony;
- There were problems with the language used and the quality and quantity of interpreters;
- The publication of photos of the autopsy on the body of Reinado was a violation of ethical standards of behavior and many questions have emerged about the capacity of the prosecution unit and the handling of evidence in relation to this case;

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<sup>1</sup> Refer to JSMP Substantive Report on the 11 February 2008 Case: *More Questions than Answers – Implications on the Justice Sector in Timor-Leste* (2011) which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

- There were many stories circulated in the media about this case, which violated and ignored the rights of the defendants in relation to the presumption of innocence as set out in the Constitution and other international conventions that have been ratified by the State;<sup>2</sup>
- When the President makes statements about a case that is still being processed, this can have an impact on the principle of the separation of powers and the independence of judicial bodies; and
- The President also granted pardons to the convicted persons in a manner that has the potential to provoke new conflict in terms of public trust in the formal justice system.

JSMP hopes that in 2011, court actors will reflect on this case and contemplate its implications on the justice sector to avoid the same problems and to ensure that in the future the truth will be established in other important cases like this one.

### **b) The Attack on the Residence of Brigadier General Taur Matan Ruak Case**

Another important case that was decided by the Dili District Court in 2010 was in relation to the Attack on the Residence of the Brigadier General Taur Matan Ruak. This case related to incidents that took place during the 2006 conflict and during the trial of this case many problems were evident that have had an effect on the justice system.

#### *Facts relating to the incident*

On 25 May 2006, the residence of F-FDTL Brigadier General Taur Matan Ruak (now Major General) in Marabia, Lahane Dili, was attacked. According to the Prosecution the attack was perpetrated by a group that included three police officers and one civilian, who were providing security in the local area. The leader of the group was Commander Abilio Mausoko Mesquita. The incident occurred within the context of the 2006 crisis when conflict broke out between PNTL and F-FDTL. As a result of the attack the residence was badly damaged and members of F-FDTL who were on duty at the residence were injured. At the time of the attack Brigadier General Taur Matan Ruak was not at home, however his child and others were inside the house.

#### *Trial Process*

The trial of this case was extremely complex and took a long time. The trial started in 2007 in the Dili District Court. The members of the group led by Abilio Mausoko Mesquita were charged with the criminal act of murder, joint participation in a crime and disturbing public order.<sup>3</sup> The defendants rejected all of the charges and said that they were at the location because they were responsible for providing security to the population who had sought refuge in their respective districts because the circumstances in Dili no longer allowed them to remain.

The trial was conducted by the Dili District Court and was concluded in August 2007. The court sentenced the defendants to imprisonment for the crime of disturbing public order, however the court found that there was insufficient evidence to find them guilty of murder. In relation to the charge of disturbing public order, the defendant Abilio Mausoko Mesquita was

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<sup>2</sup> Article 34 (1) of the RDTL Constitution, Article 11 of the Universal Declaration on Human Rights and Article 14 (2) of the ICCPR.

<sup>3</sup> Articles 365 (2), 53 and 338 of the Indonesian Penal Code; Section 4.7 of UNTAET Regulation No. 5/2001.

sentenced to four years imprisonment and the other defendants were sentenced to one year and four months imprisonment.<sup>4</sup>

The defendants, through their lawyers, expressed their dissatisfaction with the decision issued by the court of first instance, and they lodged an appeal. The Court of Appeal decided that the decision of the court of first instance was not valid because the composition of the panel of judges did not comply with the courts' internal regulations. According to internal regulations, the panel of judges must comprise two nationals and one international. However, in this matter the panel comprised one national judge and two international judges. Therefore the Court of Appeal decided to reject the decision and ordered the case to be retried by the Dili District Court.

The Dili District Court started the retrial of this case in 2008 however with the same composition of judges. The court then began the process of reassessing the evidence, for example by summoning witnesses to give their testimony again. In the end the three judges issued new sentences for the defendants in relation to the criminal act of disturbing public order and ordered them to serve four years and eight months imprisonment. These sentences were more severe than those handed down in the previous trial.

The defendants were unhappy with the decision of the Dili District Court and decided to lodge an appeal with the Court of Appeal against the second decision. The Court of Appeal accepted their second appeal, rejected the decision of the court of first instance (Dili District Court) and ordered it to hold a retrial.

The third trial was held in 2009 with three new judges (two nationals and one international). Once again they started the process of gathering evidence from the beginning. However, after the third trial the judges issued a new decision. They decided to acquit the four defendants because of a lack of evidence to prove the charges made by the prosecution against the defendants.

### *Conclusion of JSMP*

According to JSMP the attack on the residence of Brigadier General Taur Matan Ruak indicates significant problems with the judicial system in Timor-Leste.

JSMP believes that the retrials of this case are an insult to those seeking justice and indicate a serious weakness within the judicial system of Timor-Leste. JSMP believes that this case has not only confused the public, but parties to the case found it difficult to understand or comprehend what was happening during the first, second and third trial. JSMP believes that the trial process was confusing because of the inadequacies of the judges and prosecutors, and the retrials occurred may have occurred because the trials were not conducted properly or because the legal actors were subjected to political pressure. The legal basis for the first and second retrials is unclear. This has led to doubts and questions being raised by the public about the sentiment or independence of the court and its mandate to uphold justice.

The retrial of a case also impacts the work of the court actors and places a burden on witnesses who have to re-attend the court to provide testimony as evidence. The court actors, especially those in the Dili District Court, had to devote a lot of time to this case and it stopped them from reducing the backlog of cases before the courts. Also witnesses summoned to provide testimony

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<sup>4</sup> For more information, please refer to JSMP Press Release entitled '*Abilio Mausoko sentenced to four years imprisonment, and other defendants are sentenced to one year and six months imprisonment*' 13 August 2007, available on the JSMP website [www.minihub.org](http://www.minihub.org) under 'Publications'.

had to allocate a lot of their time. JSMP believes that a number of witnesses who provided testimony during the first trial were unwilling to attend the next trial and repeat their testimony. After careful consideration of the many positions and interpretations that exist in relation to this case, JSMP concluded that the retrial of this matter had the potential to violate the principle of “*Nebis In Idem*” set out in the Constitution and other legal instruments.<sup>5</sup> JSMP hopes that the court actors can learn from this experience and can prevent retrials occurring in the future.

### **c) The Fatu Ahi Case**

#### *Facts relating to the incident*

The Fatu Ahi trial was another important trial conducted by the Dili District Court during 2010. This case was also linked to the 2006 crisis and related to an attack on and shooting of F-FDTL members in Fatu Ahi on 23 May 2006. This attack involved approximately 28 defendants, comprising both petitioners who had left the army, and former members of PNTL, who were led by the deceased Major Alfredo Reinado.

#### *Trial Process*

The trial started on 3 May 2010 and ended on 17 September 2010. The trial started with the presentation of 28 defendants by the prosecution who were suspected of being involved in the attack and shooting incident in Fatu Ahi. Of those 28 defendants, one person could not attend the trial because he was undergoing medical treatment overseas and the court decided to continue with the trial of the other 27 defendants who were present, and the remaining defendant would be tried separately.<sup>6</sup>

The prosecution charged the defendants with the following crimes:

- The defendants were charged and convicted of taking part in a criminal act committed by a group, a crime against the state, as well as crimes against life or murder which are set out in the Indonesian Penal Code;<sup>7</sup>
- The defendants were strongly suspected of using guns, bullets and other means to disrupt the public order as set out in UNTAET Regulation No.5/2001;<sup>8</sup> and
- The defendants were suspected of taking part in a criminal act committed by a group as set out in the Timor-Leste Penal Code.<sup>9</sup>

However, when this trial reached the final stage to hear the recommendation of sentence the prosecution requested for the court to sentence the defendants to a five month suspended sentence for participating in a criminal act committed by a group.<sup>10</sup>

#### *The Court's Decision*

On 17 September 2010 the Dili District Court read out its final decision in this case. Based on the evidence presented during the trial that lasted for five months, the court decided that there was insufficient evidence to prove the charges made by the prosecution and therefore to convict

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<sup>5</sup> Refer to JSMP Press Release April 2010 on the JSMP website; <http://www.jsmp.minihub.org>, under ‘Publications’.

<sup>6</sup> According to Article 258 of the Timor-Leste Criminal Procedure Code: “Where a defendant is practically unable to appear at the hearing due to advanced age, serious disease or residence overseas, he or she may request or agree that the hearing be held in his or her absence, in which case the defendant shall be represented by his or her defender for all possible purposes.”

<sup>7</sup> Articles 55, 108 and 338 of the Indonesian Penal Code.

<sup>8</sup> Section 4.4.7, UNTAET Regulation No. 05/2001.

<sup>9</sup> Article 190 of the Timor-Leste Penal Code.

<sup>10</sup> Article 190.1 of the Timor-Leste Penal Code.

the defendants. In light of these considerations, together with the unconvincing evidence, the court then decided to acquit the defendants in the Fatu-Ahi case.

### *Conclusion of JSMP*

Based on monitoring conducted during each of the hearings, JSMP observed that when F-FDTL members were involved in the trial as witnesses, events occurred that should have been prevented in order to maintain respect for the authority of the court. These events occurred because when the witnesses appeared to give their testimony, they behaved in a manner that could be seen as lacking respect for judges, prosecutors and lawyers. For example, when the judges questioned them in their capacity as witnesses they did not respond to these questions, and actually responded by questioning the judges about the trial. The witnesses also came to court wearing military uniforms and carrying weapons. In circumstances like this their position as military officers had the potential to intimidate the court actors and other parties involved in the trial.

JSMP believes that when witnesses who are members of the military provide testimony to the court they have to obey their obligation to act as a witness and there is no scope for them to issue instructions or orders to the judges or other law enforcement officers. JSMP recommends for judges to take firm action against witnesses in such instances. Judges have the legal authority to take necessary action, to compel any person to submit to and obey the court. In this context, they also have the authority to stop a witness from acting outside of his capacity as a witness or failing to obey a court order.<sup>11</sup>

### **d) Approval of the Law Against Domestic Violence**

On 7 July 2010, Timor-Leste, through its National Parliament, made history in this country by approving the Law Against Domestic Violence (Law No. 07/2010) which was promulgated by the President.<sup>12</sup> The aim of this law is to prevent domestic violence and provide protection for victims of domestic violence.

Before this law was introduced, when the prosecution had to deal with cases involving acts characterized as domestic violence, the prosecutor would usually refer to Article 145 of the Penal Code. This article deals with the crime of ‘simple offence against physical integrity’ which is categorized as a crime on complaint (a semi-public crime). The Law Against Domestic Violence changed the classification of crimes occurring within the sphere of domestic violence to ‘public crimes’. This means that even if the victim and the defendant reach an agreement, the court must still issue a decision and impose a punishment. JSMP believes that this change is a very important very important step to help victims to receive justice in court.

Another important article in the Law Against Domestic Violence is Article 25 which states that victims have the right to receive legal assistance from a lawyer, either a private lawyer or a public defender, when they experience violence in the home.

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<sup>11</sup> Article 119 of the Timor-Leste Criminal Procedure Code on the purpose and limits of depositions states that: “A witness is enquired about the facts of which he or she may be directly aware and constitute elements of proof”. In relation to this clause, JSMP does not see any phrasing that would enable a witness to suggest anything, or to place pressure on the court to do this or that. Refer also to Article 123 of the Timor-Leste Criminal Procedure Code on the obligations of a witness. For more information, refer to JSMP publication ‘Justice Update, Prosecutor’s Indictment weak: defendants fully acquitted in Fatu-Ahi Case’, dated 14 December 2010 which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under ‘Publications’.

<sup>12</sup> For more information, refer to JSMP Justice Update ‘Combination of Penal Code and Law Against Domestic Violence’ which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under ‘Publications’.

Even though the Law Against Domestic Violence has been promulgated and enacted, JSMP notes that the law has not yet been implemented fully or effectively. This law is because the State itself does not yet have all hasn't yet established the facilities necessary to provide assistance to victims such as shelters etc which are mentioned in the law. Furthermore, the law does not clearly specify who will coordinate with assistance centers on behalf of victims.

While JSMP is concerned about these circumstances, JSMP hopes that in the near future the relevant ministries can begin the process of establishing the safe houses and safe rooms which are an integral part of the services and assistance provided to victims under the law.

In addition to these problems, JSMP has observed that the actors who will implement the Law Against Domestic Violence don't yet have adequate knowledge or expertise to do so. This includes doctors, nurses, lawyers, police, judges etc. To ensure that this law can be properly implemented, those who implement the law must have sufficient knowledge about the law. Therefore it is essential to raise awareness and educate people about this law.

#### **e) Draft Laws on Juvenile Justice**

In April 2010, the Ministry of Justice provided JSMP with copies of the draft Law on Juvenile Justice and the draft Law on Special Criminal Procedures for those aged between 16 and 21 in the Juvenile Justice System.

JSMP is happy that the Ministry of Justice has begun the process of drafting these laws on Juvenile Justice. This effort is a positive and important step in ensuring and providing protection for children's rights as citizens, as set out in Article 18 of the RDTL Constitution and in accordance with the spirit of principles contained in the International Covenant on Children's Rights.

However, JSMP believes that there are major problems in relation to these two draft laws and that the consultation process was insufficient. JSMP is concerned that the two laws do not value children's rights based on international law. For example, the two laws do not enshrine the principle that the best interests of the child are the primary consideration in all decisions relating to the child, and they do not state that detention should only be applied as a last resort. JSMP is very concerned that the two laws do not reflect the reality of the situation and the availability of existing resources in Timor-Leste. Therefore JSMP believes that these laws will be very difficult and complicated to apply and implement.

In relation to these issues JSMP prepared a submission and recommendations on the two draft laws which explained JSMP's views and concerns and was submitted to the Ministry of Justice.<sup>13</sup> JSMP made several recommendations to the relevant ministry, emphasizing that a lot of work will be required to make the draft laws on juvenile justice consistent with Timor-Leste's international obligations and to ensure that this law is appropriate with the real circumstances in this country.

In relation to these concerns JSMP recommended that the Ministry of Justice take the following steps:

- Organize a working group with representatives from national and international institutions who have expertise in this sector, including representatives from the Ministry of Social Solidarity, Vulnerable Persons Unit (VPU) and other relevant government

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<sup>13</sup> For more information, refer to *Submission in the Draft Law on Juvenile Justice*, 2010, which is available on JSMP's website, [www.@jsmp.minihub.org](http://www.@jsmp.minihub.org), under 'Parliament Watch Project – Publications'.

agencies. This working group would help develop a draft law that is appropriate, relevant with the circumstances in Timor-Leste and consistent with Timor-Leste's international obligations.

- Translate all draft laws into Tetum so that those who will be affected by these laws will have an opportunity to provide comments and express their opinions;
- Prepare a draft law based on the recommendations of the working group and consistent human rights principles and rights of the child and their best interests.

After preparing this submission, JSMP was also involved in a working group organized by the Commissioner for Children's Rights on these draft laws. However until now JSMP has not received a response from the Ministry of Justice on the development of the two draft laws. JSMP hopes that in 2011 the Ministry of Justice will respond to JSMP's submission and recommendations made and that the law can be developed and approved as quickly as possible.

#### **f) Draft Law on Legal Aid**

In 2010, the Minister of Justice started drafting a law on Legal Aid. This law was drafted to facilitate and provide legal aid to citizens who do not have financial means, define those who can obtain legal aid and establish the facilities necessary to access the courts.

Article 1 of the draft Law on Legal Aid, entitled "Aim and Definition" states that:

*Legal aid comprises the acts of protecting and providing assistance to citizens, aimed at promoting access to the courts to ensure that no person is prevented or obstructed from knowing about, implementing or defending his/her rights in court, due to social reasons, cultural status or insufficient economic means.*

This law includes measures providing for legal representation in court to be provided free of charge, the payment of court costs and assistance with transport, accommodation and food for all citizens traveling from their homes to the courts.

In the opinion of JSMP, most of the provisions contained in the draft Law on Legal Aid are positive and if they are implemented effectively have the potential to provide benefits to all citizens who lack financial means.

JSMP hopes that the Ministry of Justice can finalize this law and submit it to the National Parliament to be approved. JSMP also hopes that in the future the government will allocate sufficient funds to implement this law effectively.

#### **g) The Draft Civil Code**

In 2010, Committee A of the National Parliament discussed the draft Civil Code. This code is a law that will set out the legal relationship between the legal interests of one person in relation to another.<sup>14</sup> This law will also include the standards that will provide guidance for other more specific laws that relate to the issues mentioned in the Civil Code (for example, adoption, child care etc).

The draft Civil Code of Timor-Leste comprises five books, namely:

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<sup>14</sup> Prof. R Soebekti SH . *Hukum Perdata* (Civil Law), 26 March 2009, Kunjungan: 15643.

1. *General Provisions* – This section covers the general principles that are relevant to all parts of the Code;
2. *Book on Obligations* – For example, general contracts, consequences of non-compliance with contracts, construction contracts, mandates;
3. *Book on Property* – For example, land rights, sale and rental contracts.
4. *Book on Family* – For example who is allowed to marry, divorce, adoption and the right to alimony;
5. *Book on Inheritance* – For example, who is entitled to accept an inheritance, how the government will determine the value of an inheritance.

JSMP believes that this draft law is extremely important for Timor-Leste. However the draft law does not yet reflect the actual circumstances of Timor-Leste and has not been subject to an adequate consultation process. Therefore JSMP organized a Focus Group Discussion that was attended by other NGOs to discuss this draft law and then submitted recommendations to Committee A of the National Parliament on how to draft the law appropriately.<sup>15</sup> JSMP also organized an unofficial translation of Books 3 and 4 of this code from Portuguese into Tetum in order to help the community and other NGOs to understand this important draft law.<sup>16</sup>

JSMP makes the following recommendations about what must be done before the National Parliament can amend and approve the draft Civil Code:

1. So that everyone can understand and voice their opinion on this important draft law, JSMP recommends that the Parliament to translate into Tetum all of the books that form part of the draft Civil Code;
2. The Parliament should conduct a wide and substantive consultation process to consider how this law will apply in practice;
3. The consultation process must cover all of the issues included in the Civil Code. For example, de facto relationships, the practice of *'barlake'*, domestic violence, community and customary land, inheritance matters, and protection for children when they are part of a family living in impoverished conditions;
4. The consultation process must consider how to disseminate information effectively so that everyone in Timor-Leste can understand everything contained in the Civil Code that is new or relevant to their daily life;
5. The consultation process must include discussions with local authorities such as sub-village chiefs (*Xefi Aldeia*), village chiefs (*Xefi Suku*) and customary elders (*Lian nain*);
6. In order to implement this consultation process and to revise the draft law, JSMP suggests that Parliament could establish an institution or commission with a strong and extensive mandate. This commission would have 6 or 7 professionals with relevant experience who will work full time on the Civil Code. Some members of the commission must be Timorese, as well as professional experts;
7. After the consultation process the National Parliament can reconsider the draft Civil Code and decide if this law is ready to be approved or requires further revision.

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<sup>15</sup> For more information, refer to JSMP Press Release '*JSMP organizes Focus Group Discussion on the Civil Code, Section "Family Rights" and "JSMP makes proposal to Committee A of the National Parliament on the Civil Code, 2010*' which is available on the JSMP website: [www.minihub.org](http://www.minihub.org) under 'Parliament Watch Project – Publications'.

<sup>16</sup> For more information, refer to JSMP Press Release '*JSMP organizes Tetum translation of book IV of the Civil Code*' and '*JSMP organizes translation of Book III of the Civil Code on Land and Property*' on 8 September 2010 and 17 January 2011, which are available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Parliament Watch Project – Publication'.

JSMP hopes that in 2011 Committee A will accept JSMP's recommendations and therefore will be able to produce a draft Civil Code that is appropriate to the circumstances encountered by the people of Timor-Leste.

#### **h) On the issue of pardons**

An issue that was very sensitive and controversial in 2010 relates to the President's authority to issue pardons. On 20 August 2010 the President used his authority as provided for in Article 85(i) of the Constitution to grant pardons to those involved in the 2006 crisis and the 11 February 2008 Attack, namely towards Gastao Salsinha and his group who joined the deceased Major Alfredo Reinado Alves in attacking the President and ambushing the Prime Minister's convoy.<sup>17</sup>

This policy or practice of granting pardons to these perpetrators was then followed by a strong reaction from civil society, other institutions such as the church and individuals from various circles. On this issue, JSMP took a firm stance and questioned the prerogative authority of the President and the appropriate procedure that the President is supposed to follow. This is because JSMP believes that the pardons granted to the perpetrators who were involved in the crisis did not give the public the right idea about how to accept and understand fair justice, since a person found guilty should be held accountable for his actions in jail so that he himself or others are deterred from committing the same crime in the future.

JSMP believes that if the President grants pardons to any person without consideration of the criminal record and the type and severity of crime committed by the convicted person, then this will create the wrong impression of the justice sector and will be counterproductive to efforts and the commitment to uphold the legal system in Timor-Leste.

Therefore, JSMP believes that it is very important for Timor-Leste to have an organic law to regulate on the President's authority to grant pardons. Nevertheless, JSMP also acknowledges that this law would not be intended to limit the authority of the President. With this in mind JSMP submitted a proposal to the Ministry of Justice and other competent bodies such as the National Parliament, Court of Appeal and Prime Minister to address this issue.<sup>18</sup> This proposal was also intended to explain JSMP's position on pardons. In relation to this matter, JSMP also had the opportunity to meet with the President, Prosecutor-General and the Deputy Special Representative of the Secretary General of the United Nations, Finn Rieske Nielsen.<sup>19</sup>

JSMP hopes that in 2011, the sovereign institutions will consider the impact of granting pardons on the justice system and the government will start the process of drafting a law to regulate this practice.

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<sup>17</sup> For more information, refer to JSMP Press Release '*Competency of the President to grant pardons: Prerogative right versus Credibility of the Justice System*' August 2010 which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

<sup>18</sup> JSMP Proposal '*Competence of the President to Grant Pardons and Commute Laws: The need for a clear law; JSMP to the Ministry of Justice*', October 2010, which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

<sup>19</sup> For more information, refer to JSMP Press Release, '*JSMP meets with UN Representative in Timor-Leste*', 5 October 2010 which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

### 3. Experience of Women in the Justice System of Timor-Leste in 2010

In 2010, JSMP through its Victim Support Service (VSS) and Women's Justice Unit (WJU) conducted a range of activities to examine the position of women in the justice system and gave various kinds of relevant and practical assistance to women on how to access justice. In this section of the report, JSMP will information and analysis of:

- Women who are victims of gender based violence;
- Legal advice provided by the VSS to women who are victims;
- The position of female judicial actors in the justice system;
- Progress since the Law on Witness Protection was approved; and
- Article 125 of the Criminal Procedure Code which creates problems for women seeking justice.

#### a) Female victims of gender based violence and their experiences with the justice system in 2010

Based on JSMP monitoring, women still constitute a vulnerable group within the justice system of Timor-Leste. They are particularly vulnerable because often women interact with the justice system because they are victims of domestic violence or gender based violence. Women also face challenges in trying to access justice because:

- Most wives are economically dependent on their husbands;
- The impact of patriarchal culture in the community;
- Their families do not support them when they encounter problems;
- Often they don't have knowledge about the formal justice system because they do not have a sufficient level of education like men;
- The courts have only a very limited understanding of gender based violence; and
- There is a lack of gender sensitivity within families and communities.

In order to demonstrate the types of problems that women experience, JSMP will refer to a case from 2010. This case involved the defendant Oscar da Costa who was the husband of the victim "RS" from the Aus-Ero Sub-Village, Lifau Village, Oecusse District.<sup>20</sup> The victim suffered serious injuries. The Oecusse District Court heard that the defendant had been beating his wife for a long time ever since they got married. The defendant paid '*barlake*' (dowry) to the family of the victim when they got married. Therefore the families of the defendant and the victim were not able to intervene (the issue was settled through the traditional process of customary law).

In this case the prosecution charged the defendant with Article 145 of the Timor-Leste Penal Code on the crime of 'simple offence against physical integrity', which carries a sentence of 3 years imprisonment or fine. In this case the court fined the defendant US\$150 to be paid over ten months at \$15 per month. If the defendant fails to comply with the court's decision then he will be placed in prison for 60 days or two months.

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<sup>20</sup> Case No. 36/C/2010/TDO, which was monitored by the WJU in Oecusse District Court on 23 November 2010.

JSMP believes that this case study shows the major problems that women face when they try to enforce their rights. The first problem relates to family and culture. In this case the family of the victim did not try to resolve this problem at the time that the victim was experiencing the problem with her husband. This happened because the husband had paid *barlake* (dowry). The wife's family had accepted the *barlake* and saw this problem as a private matter between husband and wife that could be considered normal. The wife's family believed they couldn't use the formal system.

The second problem was the judge's extremely limited understanding of gender based violence. Even though the maximum penalty available was 3 years jail, and the victim suffered serious injuries, the judge only issued a fine of \$150. JSMP fully understands that the fine imposed by the court against the defendant is a substantial amount given that the defendant is a farmer. However, JSMP believes that the fine imposed by the court does not reflect the suffering and loss experienced by the victim. This fine itself does not consider the victim's day-to-day necessities, and is not sufficient for the victim to continue her life or to educate the population to prevent such incidents from occurring in the future.

According to JSMP, this study case shows some of the problems faced by women who try and seek justice through formal legal channels. JSMP hopes that in 2011 the court actors can work together to help victims take their cases to court and also obtain appropriate outcomes.

#### **b) The activities of VSS in providing legal aid to victims in 2010**

To help victims in difficult circumstances access justice, JSMP established the VSS to provide assistance and legal representation for victims of gender based violence. The VSS supports the legal process by assisting clients to understand their rights and responsibilities based on the national and international law. In addition, the VSS helps victims to understand the role of court actors and the impact of decisions issued by the courts. The VSS also provides timely material assistance, such as accommodation, food and transport. As part of this process, victims are also helped to obtain other assistance that is not provided by the VSS, such as counseling and access to safe houses. This section of the report outlines VSS activities that have been provided to the public, such as legal representation to victims and children to enable them to access the formal justice system in 2010. The VSS has provided the following statistics and analysis to reflect on their experience in providing legal assistance.

Between January and December 2010, the VSS established initial contact with and provided legal representation to clients in 218 cases. A high proportion of these cases involved domestic violence, as well as attempted rape, sexual violence and rape. During this year the VSS provided assistance in cases that predominantly involved domestic violence classified as physical, psychological, economic and sexual violence.

In approximately 7 of these cases the courts issued a final decision. However in most cases the process was still pending before the police and the prosecution. This situation is due to:

- A lack of resources;
- Victims live a long way from the courts; and
- Victims have shifted residence without informing the competent authorities.

Of the other cases handled by the VSS:

- 98 cases are still being investigated by the police;

- 96 cases are still being processed by the prosecution;
- 18 cases are still being processed by the courts and awaiting trial;
- 18 cases have been closed by the prosecution because of insufficient evidence to pursue prosecution;
- 3 cases were referred to the public defenders office because they were categorized as civil cases;
- 1 case was referred to the Cova Lima Legal Aid Institution;<sup>21</sup> and
- 3 cases were settled through traditional means or between the families.

The table below provides a breakdown of cases handled by the VSS during 2010.

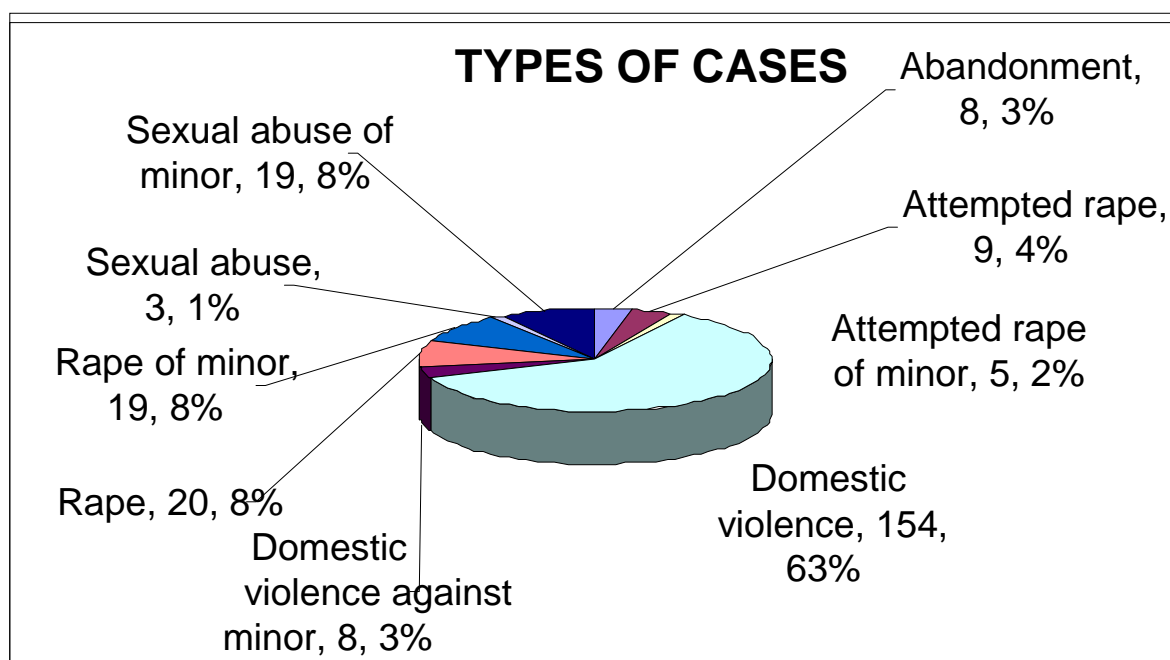
**VSS Cases between January - December 2010**

Type of Case	Total	Percentage
Abandonment	8	3%
Attempted rape	9	4%
Attempted rape of a minor	5	5%
Domestic Violence	154	63%
Domestic Violence against a minor	8	3%
Sexual Violence	20	8%
Sexual Violence against a minor	19	8%
Sexual Assault	3	1%
Sexual Abuse of a minor	19	8%
<b>Total</b>	<b>245</b>	<b>100%</b>

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<sup>21</sup> The Cova Lima Legal Aid Institution is an organization that provides legal aid and representation.

**Breakdown of cases handled by the VSS between January – December 2010**



**Source of referrals to the VSS between January – December 2010**

	Alola	Fokupers	Other	Police	Pradet	Prosecution	Walk in	Totál
<b>Ail</b>				4				4
<b>Anr</b>				9				9
<b>Bcu</b>				22	1			23
<b>Bbnr</b>				3				3
<b>CvLi</b>		1		21				22
<b>Dili</b>			2	38	17	1	1	59
<b>Erm</b>				23				23
<b>Lqc</b>				29	1			30
<b>Lspls</b>				5				5
<b>Mntt</b>	1			2				3
<b>Same</b>		1		11	1		1	14
<b>Oecusse</b>				43				43
<b>Vqq</b>				6	1			7
<b>Total</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>216</b>	<b>21</b>	<b>1</b>	<b>2</b>	<b>245</b>

The statistics above relate to the type of case handled by the VSS, improvements and challenges faced by victims when trying to pursue their case through the formal system.

**c) Female actors in the judicial system in 2010**

Based on monitoring conducted by JSMP, the following statistics were prepared on female actors in the judicial system of Timor-Leste. These women carry out their duties in each of the district courts in Timor-Leste. Until now, there has been a disparity between the number of males and females, namely there are only a small number of women.

**Table showing the number of female actors in the justice sector of Timor-Leste**

District Court	Total Judges	Female Judges	Total Prosecutors	Female Prosecutors	Total Public Defenders	Female Public Defenders
Dili	9	3	9	3	7	3
Baucau	3	2	2	1	2	-
Suai	1	-	1	1	1	-
Oecusse	1	-	1	-	1	-
<b>Totál</b>	<b>14</b>	<b>5</b>	<b>13</b>	<b>5</b>	<b>11</b>	<b>3</b>

Based on the figures presented in the table above, the number of female judicial actors is still quite small in comparison with males. This is also the case with trainee judicial actors, where there is gender disparity (many more men). JSMP believes that this situation has occurred because many women complete their study and do not apply to the Judicial Training Center, choosing other professions such as working with government departments. JSMP believes that this is due to the fact that women do not wish to commit a considerable amount of time to attend the Judicial Training Centre because they wish to get married etc. The scholarships provided for those who study at the Judicial Training Centre are not sufficient to support a family so women prefer to discontinue their study. This gender disparity in the judicial system will become a problem because it will impact on gender mainstreaming, even if some of the judicial actors are gender sensitive.

For this reason, JSMP, through its WJU, organized seminars in May and June 2010 for female students from university and senior high school. This program aimed to support and inspire these students to continue their study at the tertiary level and choose law and also to take part in the competitive process to become a judicial actor. JSMP hopes that these efforts will help to achieve a gender balance in the future.

#### **d) Application of the Law on Witness Protection**

Based on JSMP monitoring, even though Law No. 2/2009 on Witness Protection has been approved, it still has not been implemented properly. This law was approved in 2009 with the aim of protecting witnesses so they could feel confident and safe enough to testify freely. This law included provisions on ensuring the safety of witnesses by protecting their identity and other information. Also this law allows the court to separate a witness if the witness does not feel comfortable enough to reveal the truth in the presence of a defendant. The fundamental objective of this law should be taken into consideration by the competent authorities so that the Law on Witness Protection can be implemented effectively.

Based on JSMP monitoring, until now a number of witnesses have been reluctant to provide testimony in court, because they have not been provided with security and therefore it is a major challenge for the judicial process in court to establish the truth. This often happens in cases of gender based violence. Such circumstances do not assist the search for evidence that is necessary to ensure that this process can ultimately provide justice that is credible. JSMP recommends for the government and the courts to look at how this law is being implemented, so that victims can gain access to justice and so that the judicial system can move forward.

#### **e) Article 125 of the Criminal Procedure Code still problematic for women**

In relation to the testing of evidence in court, JSMP is still concerned about the application of

Article 125 of the Criminal Procedure Code on the right to refuse to give testimony in Court.<sup>22</sup> Article 122 of the Criminal Procedure Code states that if a person has the capacity to act as a witness in a case then he/she is obliged to provide evidence. However, the Criminal Procedure Code provides a number of exceptions to this obligation to provide evidence. For example, Article 125 states that when the person required to act as a witness is a spouse or family member of the defendant, that person is entitled under the law to refuse to provide testimony.

JSMP is still concerned with this provision in the context of gender based violence, because of situations that arise when the only witness in a case is the victim or a relative of the defendant. It is possible for the victim or the relative to choose not to give testimony in court and therefore there will be insufficient evidence to convict the defendant. This situation will allow the defendant to again commit violence against the victim. Another concern that has emerged from JSMP monitoring is that many judges do not provide a clear explanation to the victim and relatives about the application of this article so they feel that there is pressure on them not to provide evidence.

An example of a case where the application of Article 125 caused a problem related to an incident that occurred in Saulidun Sub-Village, Aiteas Village, Manatuto District. This case involved maltreatment committed by the defendant RJS against his wife ADS.<sup>23</sup> The victim told the court that she was beaten by her husband. When her stepmother came to stop the defendant he also hit the stepmother of the victim. The victim told the court that the defendant had beaten her repeatedly. During the trial of this matter the victim chose not to provide detailed testimony against her husband. Finally the case was dismissed because of a lack of evidence.

This case shows that Article 125 of the Criminal Procedure Code has implications that complicate the process of securing evidence and having a matter decided by the court. The victim does not want to provide testimony to the court and there is little evidence available to charge the defendant. When this happens the case will be dismissed and there will be no other avenue to process the case.

In addition, there are other implications that the defendant may repeat his actions and the victim may be exposed to ongoing violence and this may lead many people to believe that domestic violence does not carry heavy penalties.

JSMP prepared a substantive report entitled 'Article 125 of the Criminal Procedure Code: Serious Implications for Victims of Domestic Violence' in 2009, and in this report JSMP recommended for the National Parliament to revise the Criminal Procedure Code and provide judges with greater discretion to not apply Article 125 in cases of domestic violence. JSMP urges the National Parliament to follow up this recommendation in 2011.

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<sup>22</sup> For more information, refer to JSMP Report on the provisions of Article 125 of the Criminal Procedure Code: serious implications for victims of domestic violence, 2009, which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

<sup>23</sup> For more information, refer to JSMP Report Press Release 'Trial of maltreatment against spouse - defendant and victim choose to exercise their right to remain silent', 22 October 2010, which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

## 4. Information and developments relating to the courts, prosecution service and public defender's office

In this section JSMP wishes to provide information and analysis of developments that took place during 2010 within the courts, the prosecution service and the public defender's office, in order to examine achievements and challenges that still remain in the justice sector. Based on this analysis JSMP has prepared recommendations on what needs to be addressed in 2011 and thereafter.

The information provided in this section was obtained from interviews conducted by JSMP with judicial actors between October 2010 and January 2011. Annex 2 contains a list of the people interviewed.

### a) Human resources in the judicial system

In 2010 JSMP noticed improvements in human resources. For example in 2009 there were approximately 11 national judges, however in 2010 this number increased to 14 and there were an additional 4 trainee judges.<sup>24</sup> In 2010 various judicial actors attended training programs at the Judicial Training Centre to increase their ability to perform their duties. Apart from these improvements, a number of challenges and obstacles were encountered in 2010 in relation to human resource issues. These obstacles relate to insufficient numbers of judicial actors, especially in the districts of Suai and Oecusse, a lack of interpreters in terms of both quantity and quality, as well as poor management of the contracts for international judges. JSMP hopes that these problems will be resolved promptly in 2011.

The Table below provides a breakdown of the judicial actors who are performing their duties in their respective jurisdictions.

#### Actors in the Judicial System

<b>Courts</b>	<b>Court of Appeal</b>	<b>Dili</b>	<b>Baucau</b>	<b>Suai</b>	<b>Oecusse</b>	<b>Total</b>
National Judges	4	8	3	1	1	14 <sup>25</sup>
Trainee Judges	0	4	0	0	0	4
International Judges <sup>26</sup>	3	1	1 <sup>27</sup>	0	0 <sup>28</sup>	4
Interpreters	1	4	3	0	0	8
Trainee interpreters <sup>29</sup>	0	4	0	0	0	4
Court clerks	22		7	1 <sup>30</sup>	1	
Trainee court clerks	0		0	0	1	
International Advisors on Administration	1		1	1 <sup>31</sup>	1	
<b>Prosecution Service</b>	<b>Office of the Prosecutor General</b>	<b>Dili</b>	<b>Baucau</b>	<b>Suai</b>	<b>Oecusse</b>	<b>Total</b>
International Prosecutors	6	0	0	0	0	6

<sup>24</sup> For more information, refer to JSMP annual report, "Overview of the Justice Sector 2009", which is available on the JSMP website: [www.jsmp.minihub.og](http://www.jsmp.minihub.og) under 'Publications'.

<sup>25</sup> With the exception of the President of the Court of Appeal, national judges assigned to the Court of Appeal also perform duties at the Dili District Court.

<sup>26</sup> International judges from Portugal, Brazil and Cape Verde.

<sup>27</sup> International judge from Portugal to assist national judges (new arrival)

<sup>28</sup> In 2009 one international judge was assisting the national judge however in 2010 his contract was not extended.

<sup>29</sup> The trainee interpreter is currently not working at the court because he is attending training at the Judicial Training Centre.

<sup>30</sup> In Suai there is only one permanent court clerk, to help this court clerk the court recruited two officers to handle administration.

<sup>31</sup> The international advisor was contracted by UNDP for six months. JSMP believes that this contract expired in January 2011.

National Prosecutors	0	7	2	1	1	11
Trainee Prosecutors		5	0	0	0	5
<b>Public Defenders Office</b>	<b>National Public Defenders</b>	<b>Dili</b>	<b>Baucau</b>	<b>Suai</b>	<b>Oecusse</b>	<b>Totál</b>
International Public Defenders	2	0	0	0	0	2
National Public Defenders	0	7	2	1	1	11
Trainee Public Defenders	0	5	0	1	0	6

*Lack of judicial actors, especially in the Districts of Suai, Oecusse and Baucau*

Based on JSMP monitoring, even though there has been some improvement in relation to the number of judicial actors,<sup>32</sup> these figures only indicate the bare minimum number of actors required. There is a specific need to increase the number of judicial actors in the jurisdictions of Suai, Oecusse and Baucau which cover a large area and have many residents. The lack of judicial actors is an obstacle that impacts on the performance of the justice sector.

There are not enough national judges. In 2010 there was only one judge in the jurisdictions of Suai and Oecusse. This is far short of what is required to ensure that cases can be processed efficiently. Pursuant to Article 14 of the Criminal Procedure Code, cases that carry a sentence above five years imprisonment must be heard by a panel of judges (3 judges are required to issue a decision). Therefore, most judges from Dili have to help the other district courts when a panel of judges is required.<sup>33</sup> One example related to a panel of judges in the Oecusse District Court who were required to hear a case involving the serious crime of murder which occurred on 28 April 2008.<sup>34</sup> To form the panel two judges had to come from Dili so the Oecusse District Court could function, recalling that there is only one judge in Oecusse. This means that although the number of judicial actors in Dili is reasonable in comparison with other jurisdictions, nevertheless this number is insufficient to deal with the number of cases scheduled at the Dili District Court. Sometimes hearings scheduled have to be postponed to the following day because there are not enough judges to form a panel. For example, on 26 October 2010 the Baucau District Court had to postpone a hearing in a civil case because there were not enough judges to form a panel.<sup>35</sup>

In addition, the number of judicial actors in the prosecution service and public defender's office needs to be increased. The jurisdictions of Suai, Baucau and Oecusse currently have only one prosecutor. According to Alfonso Lopes (Prosecutor assigned to Oecusse District Court) one prosecutor is not enough to carry out all of the work.<sup>36</sup>

There are not only a lack of judges, prosecutors and public defenders. There is also a need to increase the numbers of court clerks and administrative officers who assist judges, the prosecution and the public defender's office, and they also require a lot of training. In Oecusse only one international advisor is assigned to assist the judge, and in the Suai District Court there is one permanent national court clerk. There is a need to increase the number of administrative officers within the prosecution service and the public defender's office. The government should address this issue in 2011.

<sup>32</sup> Even though there has been an increase in the number of judicial actors JSMP believes that this is not significant because only a small number of people were appointed as judicial actors.

<sup>33</sup> Based on JSMP monitoring 2009-2010.

<sup>34</sup> Case No. 39/Cpo./TDO/ 2010 which was monitored at the Oecusse District Court, 05 October 2010.

<sup>35</sup> Based on JSMP monitoring of Case No. 20/Civ. PI/2009/TDB, Baucau District Court, 26 October 2010.

<sup>36</sup> Interview with Alfonso Lopez (Prosecutor at the Oecusse District Court) 23 November 2010.

### *Lack of interpreters in terms of both quantity and quality*

Based on JSMP monitoring, a significant problem in relation to the human resources is the quantity and quality of interpreters. JSMP believes that many interpreters are required to provide interpretation between Portuguese and Tetum, as well as local dialects, especially in Suai and Oecusse. The Suai District Court currently does not have an interpreter for Portuguese, Bunak and Kemak, and when a Portuguese speaking interpreter is required they have to bring one from Dili. This problem has caused delays in many cases and has slowed down the trial process. JSMP has conducted regular monitoring and observed that often when an interpreter has been unavailable judges have asked those present in the court room to help with interpretation. JSMP is happy that members of the public attending a trial are ready to help the court; however this creates problems with the quality of evidence. Interpreters who work with the courts are supposed to be given proper training on how to provide interpreting and concerning of the ethical obligations of interpreters.

In JSMP's opinion, it is not only the courts that need interpreters. The prosecution service and the public defender's office also need interpreters so they can fully understand legal documents and legislation. Currently none of them have interpreters and this impedes their work, especially in terms of understanding and using Portuguese.

### *Lack of an effective plan for the recruitment of international judges*

Based on JSMP monitoring, there have been problems with the contracting of international judges. The issue is that the courts do not get enough assistance from international judges because the contracts of a number of judges have expired and the Supreme Council for Judicial Magistrates has not yet extended their contracts or appointed new judges. For example, a court clerk at the Dili District Court stated that three international judges assigned to the Dili District Court in 2010 have returned home because their contracts have expired.<sup>37</sup> Therefore, currently there is only one international judge.<sup>38</sup> The same problem occurred at the Suai District Court. Over a period of several months an international judge was assigned there to help the national judge. However the contract of the international judge expired in September 2010, and the judge has returned home.<sup>39</sup> This has had an effect on the performance of the national judge because all of the cases that were being handled by the international judge have been handed over to the national judge. This has led to continuous delays, especially for cases that need to be heard by a panel of judges.<sup>40</sup>

Based on information obtained by JSMP, the Superior Council for Judicial Magistrates has contracted 7 international judges from Portugal who will work in 2011.<sup>41</sup> When these judges arrive in Timor-Leste, they will carry out their duties in all of the district courts and the court of appeal. JSMP hopes that in the future the Superior Council for Judicial Magistrates will be able to effectively manage the contracts of these judges, that are scheduled to expire in mid-December so that there can be an effective handover of duties from one judge to another to prevent the occurrence of the problems outlined above.

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<sup>37</sup> JSMP interview with Sebastião Marcos Soares and Marcelino Pereira, court clerks at the Dili District Court, 15 November 2010.

<sup>38</sup> Idem

<sup>39</sup> JSMP interview with some people from the Suai District Court, 6 October 2010.

<sup>40</sup> Idem

<sup>41</sup> Interview with a court clerk assigned to the Court of Appeal, 23 November 2010.

## **b) Facilities and infrastructure within the justice sector**

Physically speaking all of the courts have undergone significant changes in 2010. For example the Court of Appeal building was renovated in 2009 and was being used in 2010. This building is very well equipped and provides conducive working conditions. The Baucau District Court building was also renovated, and prosecution and public defender offices have been built in each jurisdiction. Interviewees from the district courts also said that they have facilities that are mostly adequate to support their work.<sup>42</sup> Such conditions have not existed previously. This is a sign that there have been improvements in meeting the needs of each jurisdiction.

### *Accommodation for judicial actors still lacking adequate facilities*

Although there have been major developments in terms of infrastructure, there are still problems associated with accommodation for judicial actors. For example, in Suai three houses have been provided as accommodation for judges, however they have not been fully equipped with beds, cupboards etc.<sup>43</sup> This is a problem, because unfavorable conditions like this can have an impact on whether or not the judges reside at the court to effectively carry out their work.

Accommodation for court clerks is also an issue that the government needs to address so they can effectively provide services to the public. Some court clerks have stated that the biggest challenge for them is the issue of accommodation.<sup>44</sup> Judicial officers have faced a range of problems including their small salaries which are insufficient to buy a house and support their family. This also affects how seriously they can perform their work and their level of knowledge.<sup>45</sup> For example, there are four officials assigned to the Baucau public defender's office, but two of them reside in Dili because accommodation has not been provided and their salaries are very low.<sup>46</sup> JSMP believes that facilities such as this are essential for judicial actors because they are a fundamental requirement.

### *Public Defenders face a range of challenges in relation to infrastructure and facilities*

JSMP believes that although there have been significant developments in terms of infrastructure in all of the courts and prosecution units, public defenders still face a number of substantial challenges in relation to facilities and infrastructure. These challenges and problems impact on the performance of public defenders in each jurisdiction.

Public defenders in all districts face problems with facilities and offices. For example in Baucau, Suai and Oecusse they do not have access to the internet. The internet is essential to enable public defenders to conduct research and search for references and information, especially legal resources from other countries.<sup>47</sup> Problems with facilities have a huge impact on the public defenders in Suai. They only have two computers and one printer. They do not have cupboards, filing cabinets to store a range of documents, photocopiers, telephones and tables to perform their work effectively. Public defenders in Suai have one generator but it is broken and this has a huge impact on the ability of officials to carry out their tasks effectively. The broken generator means that public defenders have to work at night time when the Suai power station provides electricity. In JSMP's opinion, it is extremely important for the government to address all of

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<sup>42</sup> This includes cars, motorcycles, computers, internet, offices, generators, stationary, photocopies etc.

Interview with a court clerk assigned to the Court of Appeal, 23 November 2010.

<sup>43</sup> JSMP interview with a court clerk from the Suai District Court, 5 October 2010.

<sup>44</sup> JSMP interview with Mr. Sebastiao Marcos Soares and Mr. Marcelino Perereira, court clerks from the Dili District Court, at the Dili District Court on 15 November 2010.

<sup>45</sup> JSMP interview with court clerk Mr. Vasco Kehi, Oecusse District Court, 23 November 2010.

<sup>46</sup> Interview with Dr. Sergio Pinto Quintas, public defender at the Baucau Public Defender's Office, 10 November 2010.

<sup>47</sup> Ibid.

these problems to ensure that the public defenders can carry out their tasks and provide legal assistance to the public.

In addition, there are problems with accommodation for public defenders. In the jurisdiction of Dili accommodation has not been provided to every public defender assigned to this district. In other jurisdictions the government has built accommodation for all public defenders however until now the houses remain unoccupied because of a lack of household contents (the houses are empty).<sup>48</sup> The condition of these houses is vastly different to the accommodation that is better equipped for prosecutors and judges in each of the districts. For example, in the jurisdiction of Baucau, the government has built accommodation for public defenders; however two public defenders assigned to this district have not yet occupied the accommodation because the facilities are still inadequate. These two public defenders are still residing in Dili and rotate with each other on a weekly basis.<sup>49</sup> The same thing is occurring in Suai and Oecusse.

### c) Cases processed by the courts in 2010

In 2010 all of the courts conducted trials in a large number of cases. Based on JSMP monitoring, of the cases processed, the highest proportion related to cases of maltreatment, domestic violence, sexual violence, murder and corruption. However, in each court the number of cases that were pending continued to grow. The two tables below show the total number of cases that were tried by the courts in 2010 and the cases that were still pending at the end of 2010.

#### Cases tried during 2010

Court	Criminal Cases	Civil Cases	Total
Total	634	174	808
Court of Appeal	83	38	121
Suai District	46	0	46
Oecusse District	59	8	67
Dili District	339	107	446
Baucau District	107	21	128

#### Cases pending at the end of 2010

Court	Criminal Cases	Civil Cases	Total Cases
Court of Appeal	69	5	74
Dili District	868	332	1200
Baucau District	224	57	281
Suai District	128	16	144
Oecusse District	22	9	31
Total	1311	419	650

Annex 1 provides statistics on all of the cases dealt with by each court.

These tables show that the situation in Dili is not the same as the situation in the other districts. In Baucau, Suai and Oecusse the courts have tried a very small amount of cases in comparison with the Dili District Court, however there is also a problem with the amount of pending cases. In JSMP's opinion this means that peoples level of understanding and trust in the districts is quite low in comparison with Dili, and the other district courts have a very limited ability to process cases. In the jurisdiction of Dili, even though there are many more human resources and

<sup>48</sup> Interview with Dr. Sergio Pinto Quintas, Public Defender at the Baucau Public Defender's Office, 10 November 2010.

<sup>49</sup> Ibid.

facilities, the number of pending cases is still high. JSMP believes that this is due to the fact that the courts prioritize cases that carry more serious penalties. These cases are time consuming and protracted and have an impact on the number of pending cases.

#### **d) Developments and general challenges for the courts in 2010**

##### *Geographical challenges for all courts*

All of the courts faced a range of logistical and geographical challenges that have impacted on their performance and the number of pending cases. Most people live in isolated areas, the roads are in poor condition and it is difficult for the courts to locate people's addresses. Often it is difficult for the court to deliver summons to defendants and witnesses so they can attend court trials. This regularly results in the court having to postpone hearings due to the non-attendance of defendants and witnesses who did not receive the court summons. For example, on 14 September 2010, the Baucau District Court scheduled a hearing in a criminal case for 9:30 am. However the court eventually postponed the hearing to the following day because the defendant did not appear in court, because the summons/notification issued by the court had not been delivered to the defendant, as the defendant was no longer living at his previous address.<sup>50</sup> Logistical and geographical problems were a challenge that impacted on the performance of the prosecution service and the public defender's office. It is very difficult for them to contact defendants or interested parties who live some distance away. JSMP hopes that problems caused by logistical challenges such as this will be improved when general issues regarding infrastructure are better managed in Timor-Leste.

##### *Positive Initiative – Mobile Court Service*

To increase the number of cases that can be processed, several courts have been providing a mobile court service to areas located a long distance from the courts. This mobile court service has been provided because a number of parties are unable to attend court for a variety of reasons. The courts have used this approach to bring justice closer to the people and the initiative is part of raising awareness about the law for those members of the public who live in isolated areas.

For example in 2010 the Baucau District Court provided a mobile court service to Venilale, Lospalos, Manatuto and Kaisidu–Trilolo, Baucau. The mobile court service tried several cases which included an attempted rape that occurred in Kaisidu, Trilolo.<sup>51</sup> In this case the panel of judges from the Baucau District Court had to conduct the mobile hearing to hear testimony from a witness who resides near the scene of the crime (Kaisidu) because this witness was old and could not make the journey to the court. Such an approach shows that the courts have a strong commitment and responsibility to uphold the law and provide justice to all.

JSMP encourages the ongoing use of this approach where the courts have brought justice closer to the people through the mobile court service. Based on JSMP monitoring, this mobile court service has a number of positives. This program has a positive impact on the people who live a long distance from the courts and who are unable to attend court because of unfavorable conditions. This approach can also be used to raise awareness and spread information about the

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<sup>50</sup> For more detailed information, refer to JSMP publication 'Case Summary for October 2010 and Case No. 27/Crm.C/2010/TDB, Baucau District Court, 15 September 2010 which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

<sup>51</sup> For more detailed information, refer to JSMP publication 'Case Summary for October 2010 and Case No. 27/Crm.C/2010/TDB, Baucau District Court, 15 September 2010 which is available on the JSMP website: [www.jsmp.minihub.org](http://www.jsmp.minihub.org) under 'Publications'.

law to people living in isolated areas that are a long distance from urban centers and who are unable to access this information themselves.

### *Portuguese Language is an obstacle*

All of the judicial institutions have faced a significant obstacle caused by the use of language. Official documents from all of the courts are almost always produced in Portuguese, which makes it hard for officials to effectively carry out their daily duties. For example, when the court issues a summons to attend a case, problems are encountered because the court clerks who deliver the summons don't really understand the contents of the notification. Therefore, they are unable to provide a clear explanation to the defendant, witness, victim etc. Therefore, the parties involved in a hearing are confused and sometimes they do not appear in court because they do not understand the contents of the notification. Language is an obstacle for prosecutors and public defenders who have to fully understand all court documents and legislation.

The National Secretariat believes that the issue of language used by the courts can be resolved by the Judicial Training Center, which can provide training for court clerks and others to give them a better understanding of the judicial process and more specifically to improve their capacity to use the Portuguese language.<sup>52</sup> JSMP acknowledges that the court clerks really need this training, however JSMP also believes that in order to comply with the Constitution, the courts must provide notifications in the two national languages, and it would be desirable if they could use a language understood by the population (perhaps a local language).

### *Administrative Obstacles faced by the Court of Appeal*

JSMP believes the Court of Appeals administration system that is closed to the public has a substantial negative impact on all members of society who wish to access justice. Many people who seek clear and reliable information about their cases or other important cases are told by the administrative section that they cannot readily access this information without permission from their high ranking officials. However, when they have obtained permission from these high ranking officials from the administration section they are still refused access to information. This often occurs when JSMP requests information about important cases and court statistics. For example, in order to get statistics for this report, even though JSMP had a letter from the Court of Appeal, cooperation and information was not provided by the secretariat at the Court of Appeal.<sup>53</sup> Even though JSMP obtained permission from the Court of Appeal at the end of November 2010, information was only provided to JSMP at the end of January 2011. In JSMP's opinion, such administrative problems are due to the fact that the court clerks do not yet have the capacity to plan effectively or the initiative to improve the overall performance and efficiency of the court. JSMP believes that the Court of Appeal has already been provided with assistance from donors to establish a case management system. JSMP hopes that the system that is developed will have an impact on the management performance of the Court of Appeal so that in 2011 this system can be implemented and everyone can have access to the documents they need.

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<sup>52</sup> Interview with the Chief of the National Secretariat of the Court of Appeal, 13 January 2011.

<sup>53</sup> Refer to Annex 5, letter sent by JSMP to the Court of Appeal.

## 5. Conclusion & Recommendations

2010 was a very important year in terms of the development of the judicial system in Timor-Leste since the 2006 crisis. Therefore JSMP would like to congratulate all of the components who have worked hard to develop the justice sector.

As explained in this report, a number of developments are clearly visible, for example all of the courts have processed important cases relating to the 2006 crisis, the Law Against Domestic Violence has been enacted and each of the district courts have had their infrastructure improved.

Although JSMP recognizes the developments achieved by the justice sector, a number of obstacles still remained in 2010. For example, there were substantial problems with the trials of important cases, female victims continued to face obstacles in accessing justice in their cases, the Law on Witness Protection has not yet been implemented due to a lack of resources, the use of Portuguese language is an obstacle for everyone who wishes to access the formal justice system, a lack of human resources, etc.

Based on the analysis provided throughout this report JSMP has prepared the following 25 recommendations as issues that need to be addressed in the future:

1. Court actors should reflect on major cases such as the 11 February 2008 case and its implications on the justice system, and in particular how to obtain relevant evidence of high quality to reveal the truth in future cases.
2. All court actors should carefully examine the problems that emerged during the trial of the case relating to the attack on the residence of Brigadier General Taur Matan Ruak (now Major General of F-FDTL) to avoid unnecessary retrials of other cases in the future. The Court of Appeal should publish its internal rules so that everyone can know the basis for any decision issued by the Court of Appeal.
3. In cases involving the military, such as the Fatu Ahi case, the court should issue a rule or guideline prohibiting members of the military from attending the court in military uniform or carrying guns, pistols or ammunition.
4. If a witness or other party attending the court fails to respect the court then the judge must take specific action to force everyone to obey the court.
5. The government must make available the facilities and resources necessary to provide assistance to victims so that the Law Against Domestic Violence can be implemented effectively.
6. The government and donor institutions should implement training programs for those actors who are required to ensure the implementation of the Law Against Domestic Violence, such as health professionals, doctors, lawyers and police, and judges so that they have a sufficient understanding of this law and issues of gender sensitivity.
7. The government should organize a public awareness campaign about the Law Against Domestic Violence so that everyone can understand and be aware that gender based violence and domestic violence should not just be considered as normal behaviour between spouses.
8. The government and the National Parliament should provide Tetum translations of all draft laws so that everyone that will be affected by a particular draft law can have an opportunity to comment and share their opinion on that law.

9. The Ministry of Justice should form a working group to help develop Juvenile Justice laws that are appropriate and relevant to the circumstance of Timor-Leste that are based on human rights principles and the rights of the child.
10. The Ministry of Justice should promptly finalize the draft law on Legal Aid and submit it to the National Parliament to be approved. After its approval the government should allocate sufficient funds so that this crucial law can be implemented to enable many people to have access to the courts.
11. Before approving the draft Civil Code, the National Parliament should engage in a comprehensive and substantial consultation process so that the law will reflect the real circumstances in Timor-Leste. In order to conduct this consultation process and revise this draft law the National Parliament should establish a committee with a strong and comprehensive mandate.
12. The President is asked to refrain from granting widespread pardons to everyone, and any pardons given should be based on consultation with the government and on the specific conditions of each case.
13. The Government should draft an organic law to deal with the granting of pardons to avoid future controversy when the President uses his authority to grant pardons to convicted persons.
14. The Ministry of Justice should draft a policy to encourage female law graduates to participate in the selection process for entry into the Judicial Training Centre and ensure that the legal profession is free from discrimination.
15. The government and the courts should provide adequate material assistance to implement the recently approved Law on Witness Protection so that victims of gender based violence and witnesses can have their safety guaranteed when they seek justice and so that the justice system can move forward.
16. The National Parliament should improve the Criminal Procedure Code by granting greater discretion to judges to not apply Article 125 in cases of domestic violence so that judges can compel witnesses who are family members of a defendant to provide testimony in cases such as this.
17. The Ministry of Justice and the courts should increase the number of court actors in all jurisdictions, especially the Baucau, Suai and Oecusse District Courts. This includes increasing the number of judges so that each of the district courts can try cases before a panel of judges (at least three judges in each court). It is also necessary to increase the number of prosecutors, public defenders, court clerks and officials.
18. The Ministry of Justice and the courts should also increase the number of interpreters fluent in Portuguese and Tetum as well as interpreters for regional languages in each jurisdiction so that everyone can obtain justice. Interpreters should also be provided to the Prosecution Service and the Public Defenders Office to help them to provide interpreting in all jurisdictions.
19. The Superior Council of Judicial Magistrates (Court) must establish a definite schedule on the recruitment of international judges, to prevent a recurrence of the problems encountered in 2010 where a number of international judges finished their contracts before new judges could be appointed, and this will ensure that national judges will receive the help that they need.

20. The government must pay attention to the accommodation constructed in 2010 to house court actors, because additional facilities are required to enable court actors to reside permanently in each jurisdiction and to prevent them from having to travel back and forth to/from Dili.
21. The government must provide adequate facilities in each Public Defenders Office (for example, internet, electricity) to guarantee that public defenders have appropriate conditions to enable them to provide legal representation to the community and facilitate access to legal information via the internet or other resources.
22. It is hoped that each court can continue to operate a mobile court service in each jurisdiction, as has been carried out by the Baucau and Suai District Courts, to bring justice closer to the people and to disseminate legal information to the community in isolated areas.
23. The government should provide language training to court clerks and other court actors so they can develop an adequate understanding of the legal process, especially to improve their capacity in the Portuguese language, and therefore assist them in their day to day work.
24. The courts should issue summons and other legal documents in the two national languages (Tetum and Portuguese) as well as in languages that can be understood by the person receiving the summons (for example in local languages). The courts have the responsibility to publish all documents (for example final decisions) in the two official languages of the state so that everyone can access these documents.
25. The courts should implement the case management system that has been designed already. The courts should also develop a policy on access to all information from the court to provide proper access to those entitled to receive the necessary documentation, which will increase the transparency of the court system.

## Annex 1: Case Statistics for Each Court

### Criminal cases at the Court of Appeal in 2010

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Existing pending cases	47	60	57	58	61	62	55	55	59	67	73	69	
New cases	13	3	6	3	7	7	8	6	13	15	6	2	97
Tried	0	6	5	0	6	14	8	2	5	9	10	10	83
Postponed	60	57	58	61	62	55	55	59	67	73	69	62	

### Civil cases at the Court of Appeal in 2010

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Existing pending cases	29	31	28	22	19	17	13	12	12	7	5	5	
New cases	3	2	0	1	1	1	2	0	0	1	2	1	14
Tried	1	5	6	4	3	5	3	0	5	3	2	1	38
Postponed	31	28	22	19	17	13	12	12	7	5	5	5	

### Dili District Court – Criminal cases in 2010<sup>54</sup>

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Previously postponed	857	855	861	853	836	843	836	846	844	875	867	868	
New cases	23	20	19	28	37	21	45	14	60	28	21	37	353
Tried	25	303	27	45	30	28	35	16	29	35	19	034	339
Postponed	855	861	853	836	843	836	846	844	875	867	868	872	

### Dili District Court – Civil cases in 2010<sup>55</sup>

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Previously postponed	261	262	269	272	288	301	302	312	315	317	321	332	
New cases	9	18	13	17	16	10	14	6	10	10	17	17	157
Tried	8	11	10	1	3	9	4	3	8	6	6	8	71
Postponed	262	269	272	288	301	302	312	315	317	321	332	-	

### Criminal cases at the Baucau District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Previously postponed	183	189	193	204	213	219	223	222	218	220	223	224	
New cases	18	15	21	13	15	12	13	4	6	13	9	4	143
Tried	12	11	10	4	9	8	14	8	4	10	8	9	107
Postponed	189	193	204	213	219	223	222	218	220	223	224	219	

### Civil cases at the Baucau District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Previously postponed	40	44	49	49	53	56	57	58	58	58	58	57	
New cases	5	5	4	4	5	5	4	4	0	2	1	0	37

<sup>54</sup> These statistics were provided by the Secretariat of the Dili District Court to JSMP on 15 December 2010.

<sup>55</sup> Ibid.

<b>Tried</b>	1	0	0	0	2	3	3	4	0	2	2	2	21
<b>Postponed</b>	44	49	49	53	56	57	58	58	58	58			

#### **Criminal cases at the Suai District Court<sup>56</sup>**

<b>Case</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Total</b>
<b>Previously postponed</b>	93	92	95	95	99	106	111	132	135	131	126	128	
<b>New cases</b>	2	5	7	7	11	4	21	4	4	3	9	0	77
<b>Tried</b>	3	2	7	3	4	3	0	1	8	8	7	0	46
<b>Postponed</b>	92	95	95	99	106	111	132	135	131	126	128	128	

#### **Civil cases at the Suai District Court<sup>57</sup>**

<b>Case</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Total</b>
<b>Previously postponed</b>	1	1	3	4	4	6	8	9	12	13	14	16	
<b>New cases</b>	0	2	1	0	2	2	1	3	1	1	2	0	15
<b>Tried</b>	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Postponed</b>	1	3	4	4	6	8	9	12	13	14	16	16	

#### **Oecusse District Court – criminal cases in 2010**

<b>Case</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Total</b>
<b>Previously postponed</b>	15	14	17	10	12	13	17	13	20	17	27	22	
<b>New cases</b>	1	5	2	7	4	8	5	7	5	14	0	5	63
<b>Tried</b>	2	2	9	5	3	4	9	0	8	4	5	8	59
<b>Postponed</b>	14	17	10	12	13	17	13	20	17	27	22	19	

#### **Oecusse District Court – civil cases in 2010**

<b>Case</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Total</b>
<b>Previously postponed</b>	16	16	16	16	13	13	13	12	9	9	9	9	
<b>New cases</b>	23	1	0	0	0	0	0	0	0	0	0	0	1
<b>Tried</b>	1	0	0	3	0	0	1	3	0	0	0	0	8
<b>Postponed</b>	16	16	16	13	13	13	12	9	9	9	9	9	

<sup>56</sup> All of these statistics were provided by the Secretariat at the Suai District Court. Although JSMP requested these statistics directly, the Court did not provide them, so JSMP used statistics that UNMIT had obtained from the court.

<sup>57</sup> Ibid.

## **Annex 2: List of interviews conducted by JSMP during the compilation of this report**

### ***Dili***

1. JSMP interview with Mr. Aderito Tilman, at the Office of the Prosecutor General, 22 November 2010.
2. JSMP interview with Mr. Sebastião Marcos Soares and Mr. Marcelino Pereira, Court Clerks from the Dili District Court, at the Dili District Court on 15 November 2010.
3. Interview with an officer assigned to the Court of Appeal, at the Court of Appeal on 23 November 2010.
4. Interview with member of the National Secretariat of the Court of Appeal, at the Court of Appeal, on 14 January 2011.
5. Interview with Ms. Maria Veronica, Director of the Timor-Leste Bar Association (AATL), at the office of the Timor-Leste Bar Association, Dili, 14 December 2010.

### ***Baucau***

6. Interview with Mr. Sergio Pinto Quintas, SH Public Defender, Baucau Public Defender's Office, 10 October 2010.
7. Interview with Mr. Helder Veinhas, Court clerk of the Baucau District Court, at the Baucau District Court, 28 October 2010.
8. Interview with Mr. Lino Pereira, SH Executive Director of *Fundasaun Edukasaun Komunitade Matebian* (ECM), 10 November 2010.

### ***Suai***

9. Interview with an officer from the Suai Public Defender's Office, at the Suai Public Defender's Office, 6 October 2010.
10. Interview with Prosecutor from the Suai District Court, Ms. Zélia Trindade, at the Suai District Prosecution Unit, 4 November 2010.

### ***Oecusse***

11. Interview with court clerk Mr. Vasco Kehi, Oecusse District Court, on 23 November 2010.
12. Interview with Mr. Alfonso Lopez SH, prosecutor from the Oecusse District Court, 23 November 2010.
13. Interview with Mr. Amado de Almeida SH, Public Defender, at the Oecusse Public Defender's Office, 24 November 2010.
14. Interview with Mr. Vasco Kehi, court clerk from the Dili District Court, 25 November 2010.
15. Interview with Mr. Raimundo de Fatima Eti, Coordinator of Private Lawyers *Advogado Fundasaun Fatu Sinai Oe-Cusse* (FFSO), at the office of FFSSO – Legal Aid Unit, Oecusse, 26 November 2010.

## Annex 3: Results of JSMP court monitoring (LRU) in all of the district courts

The table below shows the number of cases monitored by the LRU in 2010. The opinions and information presented by JSMP above are based on the results of these court monitoring activities.

### JSMP monitoring at the Dili District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Criminal	7	10	7	6	5	8	12	2	5	3	2	2	
Civil	1	0	0	0	4	2	0	1	0	0	0	1	
<b>Total</b>	8	10	7	6	9	10	12	3	5	3	2	3	78

### JSMP monitoring at the Baucau District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Criminal	0	5	9	5	4	5	1	0	1	0	3	0	33
Civil	0	0	1	0	0	0	4	0	1	4	1	0	11
<b>Total</b>	0	5	10	5	4	5	5	0	2	4	4	0	44

### JSMP monitoring at the Suai District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Criminal	0	0	0	3	0	1	2	0	4	1	0	0	11
Civil	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Total</b>	0	0	0	3	0	1	2	0	4	1	0	0	11

### JSMP monitoring at the Oecusse District Court

Case	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Criminal	0	0	7	0	4	0	0	0	0	1	0	0	12
Civil	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Total</b>	0	0	7	0	4	0	0	0	0	1	0	0	12

## **Annex 4: JSMP monitoring (WJU) in all district courts**

The table below shows the cases monitored in 2010. The opinions and information presented by JSMP above are based on the results of these court monitoring activities.

### **Statistics on cases of gender based violence monitored by WJU in 2010**

<b>District Court</b>	<b>Sexual Violence Cases</b>	<b>Domestic Violence Cases</b>	<b>Cases still being processed</b>	<b>Cases that have been decided</b>	<b>Total</b>
<b>Dili</b>	14	18	11	21	<b>32</b>
<b>Baucau</b>	2	5	3	4	<b>7</b>
<b>Suai</b>	2	2	1	3	<b>4</b>
<b>Oecusse</b>	-	4	-	4	<b>4</b>
<b>Total</b>	18	29			

## Annex 5: JSMP letter to the Court of Appeal



**JUDICIAL SYSTEM MONITORING PROGRAMME**  
**PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL**

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**Meritissimu : Sr. DR. Claudio de Jesus Ximenes**  
**Prezidente Tribunál Rekursu**  
**Dili, Timór-Léste**

**Husi : JSMP**  
**Asuritu : Pedidu atu hetan assesu informasaun legal (dokumentus) no**  
**halo Entrevista ba Ator Judisiariu iha Tribunál Distritais tomak**  
**iha Timor Leste**

Ho respeito,

JSMP hari'i iha tinan 2001 atu ajuda hasa'e nível kumprimentu (*compliance*) sistema justisa Povu Timór-Léste nian ho padroins Direitur Umanus Internasional, partikularmente sira ne'ebé iha relasaun ho julgamentu ne'ebé justu, no hodi kontribui bá prátika governasaun ne'ebé diak.


Iha tempu no biban oin mai, JSMP iha objetivu atu dissemina informasaun ne'ebé nia halibur hamutuk no assesmentu bá iha públiku, nune'é mós bá observadores Internasional sira ne'ebé maka interese hodi publika no hasai relatoriu tematiku ho titlu "*Overview Justice Sector 2010*".

Objetivu jeral husi publikasaun Overview Justice Sector ne'e maka atu kontribui bá dezvoltamentu iha sistema justisa ida ne'ebé forte no transparente liu husi produsaun bá rekomendasoins hirak ne'ebé konstrutivu bázeia bá peskiza ne'ebé kredível no monitoramentu lor-loron ba Tribunál Distritais sira.

Tanbá ne'e liu husi karta ida ne'e, ami husi Organizaun Naun Governmental JSMP ho hakra'ik aan hakarak husu **Meritissimu Prezidente Tribunál Rekursu Sr. DR. Cláudio de Jesus Ximenes** hodi fó autorizasaun ba JSMP hodi hetan assesu ba informasaun legal (dokumentus) no halo entrevista ba ator judisiariu iha Tribunál Distritais tomak iha Timor Leste, nune'é JSMP bele fo informasaun ne'ebe klaru no auténtiku nomós kredível ba públiku liu husi Overview Justice Sector ne'ebe sei publika ba.

Mak ne'e deit ami nia karta pedidu, bá Meritissimu ninia laran luak no kolaborasaun diak ami hato'o obrigadu wa'in.

Dili 22 Outubro 2010

  
**Luis de Oliveira Sampaio**  
Diretor Executivo JSMP



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

**Meritissima** : Sra. Dra. Maria Natércia Gusmão  
Prezidente Interinu Tribunál Rekursu  
Dili, Timór-Léste

**Husi** : JSMP

**Asuntu** : Pedidu atu hetan assesu informasaun legal (dokumentus) no halo Intervista ba Autor Judisiariu iha Tribunál Distritais tomak iha Timor Leste

Saudasoin Justica

Ho respeito,

JSMP hari'i iha tinan 2001 atu ajuda hasa'e nível kumprimentu (*compliance*) sistema justisa Povu Timór-Léste nian ho padroins Direitur Umanus Internasional, partikularmente sira ne'ebé iha relasaun ho julgamentu ne'ebé justu, no hodi kontribui bá prátika governasaun ne'ebé diak.

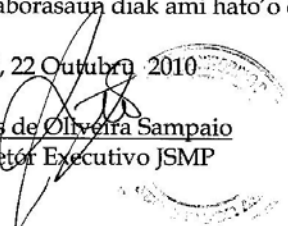
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Mak ne'e deit ami nia karta pedidu, bá Meritissima nunia laran luak no kolaborasaun diak ami hato'o obrigadu wa'in.

Dili, 22 Outubru 2010

  
Luis de Oliveira Sampaio  
Diretor Executivo JSMP



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

**Meritissima** : Sra. Dra. Jacinta Correia da Costa  
Prezidente Interinu Tribunál Rekursu  
Dili, Timór-Léste

**Husi** : JSMP

**Asuntu** : Pedidu atu hetan assesu informasaun legal (dokumentus) no  
halo Intervista ba Autor Judisiariu iha Tribunál Distritais  
tomak iha Timor Leste

Saudasoin Justica

Ho respeito,

JSMP hari'i iha tinan 2001 atu ajuda hasa'e nível kumprimentu (*compliance*) sistema justisa Povu Timór-Léste nian ho padroins Diretor Umanus Internasional, partikularmente sira ne'ebé iha relasaun ho julgamentu ne'ebé justu, no hodi kontribui bá prátika governasaun ne'ebé diak.

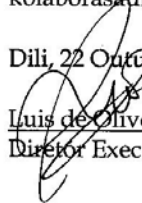
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Mak ne'e deit ami nia karta pedidu, bá Meritissima ninia laran luak no kolaborasaun diak ami hato'o obrigadu wa'in.

Dili, 22 Outubro 2010

  
Luis de Oliveira Sampaio  
Diretor Executivo JSMP

