



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁL

OVERVIEW OF THE JUSTICE SECTOR 2020



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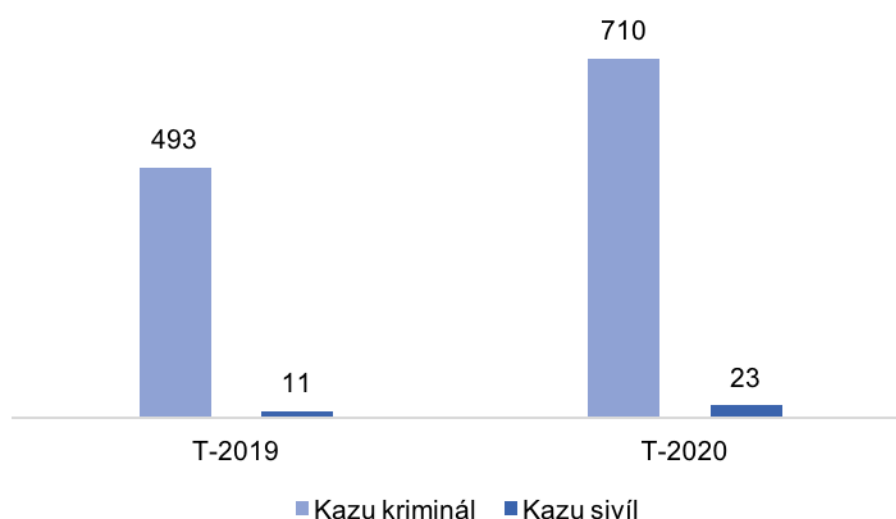
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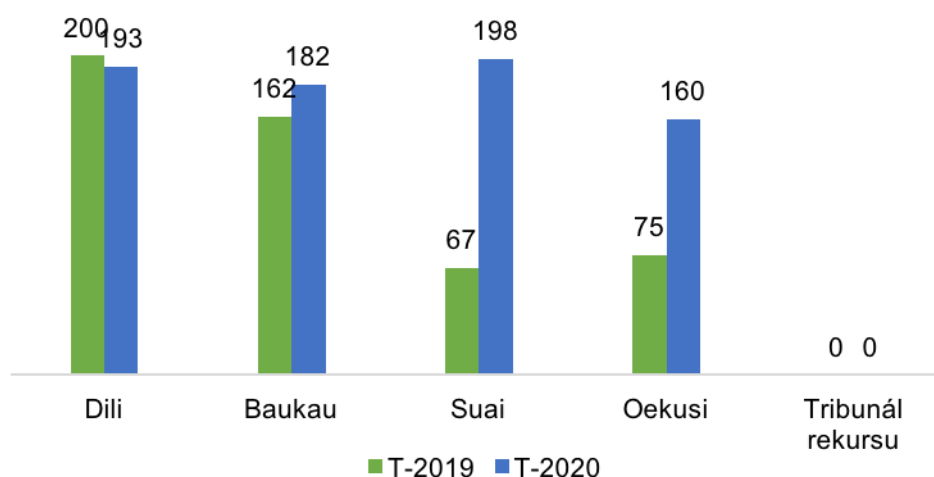
EXECUTIVE SUMMARY

In 2020 JSMP monitored 733 cases.¹ These cases comprised 710 criminal cases and 23 civil cases. This number is higher than the total number of cases that were monitored by JSMP in 2019, which was 504. The graph below compares the number of cases monitored by JSMP at the district courts in 2019 and 2020.

Graph 1: Total cases monitored by JSMP in 2019 compared with 2020



Graph 2: Total cases at the District Courts monitored by JSMP in 2019 and 2020 based on jurisdiction



¹ Annex A provides complete statistics of the cases monitored by JSMP, including cases that were tried by the courts

In 2020, JSMP still did not have access to trials at the Court of Appeal because this court did not open trials and hearings to the public for appeal cases, namely the reading out of rulings and the court continued to examine the process and make deliberations. Therefore, during the entire year of 2020 JSMP did not monitor any cases at the Court of Appeal. In 2020 the Court of Appeal managed to deliberate on 259 criminal cases and 66 civil cases.²

In 2020 the justice sector continued to show some important developments although at the same time the justice sector also encountered challenges due to the political impasse that continued to use the duodecimal budget. Also, there was the application of a State of Emergency in relation to the Corona Virus Pandemic or COVID-19 for two months, and therefore the courts as well as all institutions could not function as per normal. The courts were only reactivated, or the work of the courts was normalized, at the start of June, however efforts were made to ensure compliance with COVID-19 prevention mechanisms.³

Progress was achieved in the justice sector in 2020 with an increase in human resources, namely 13 more staff (3 judges, 5 prosecutors and 5 public defenders), as well as the promotion and allocation of judges and the Oecusse District Court conducted mobile trials. JSMP also noted other important progress, namely the courts tried 6 cases of corruption involving members of government and former members of government.

Challenges faced by the justice sector in 2020 included a decrease in budget for the judicial institutions due to the political impasse and these institutions managed to implement their programs with the duodecimal budget.

The Ministry of Justice budget in 2020 was US\$11,609,000 which was US\$10,374,000 million less than the 2019 budget of US\$21,983,000. Therefore many programs were not implemented including a lack of responses to a number of challenges that the Office of the Public Defender encountered, for example transport. Meanwhile the budget for the Court of Appeal was US\$6,014,000 which was reduced by US\$1,527,000 in comparison with the 2019 budget of US\$ 7,541,000.

This reduction meant that the Court of Appeal could not respond to the limitations faced by the district courts because there was no item for the operational supplies. The Public Prosecution Service had a budget of US\$4,084,000 which was US\$442,000 less than the 2019 budget of US\$4,526,000. The Office of the Public Defender had a budget of US\$1,408,000 which was US\$127,000 less than the 2019 budget of US\$1,535,000.

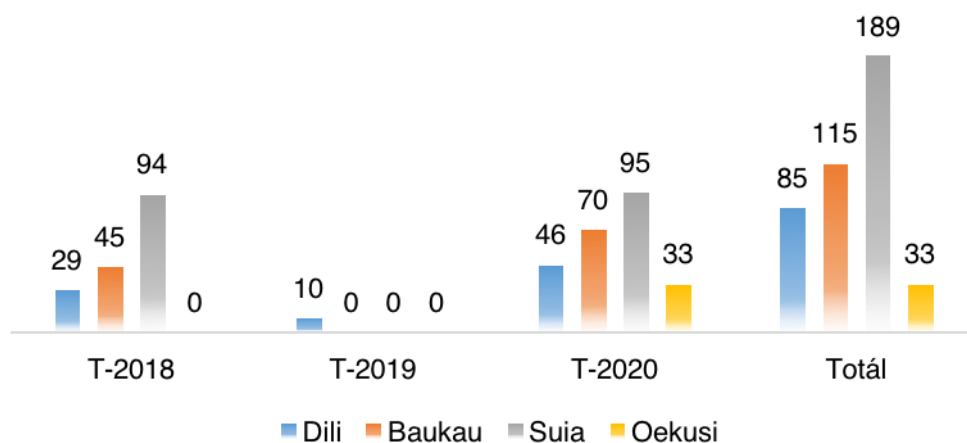
² Statistics on the total number of cases that were registered and tried by the Court of Appeal in 2020 are available in Annex A

³ JSMP Press Release on the courts reactivating trials: <https://jsmp.tl/wp-content/uploads/PR-Tribunál-reactiva-fali-julgamentu.pdf>

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

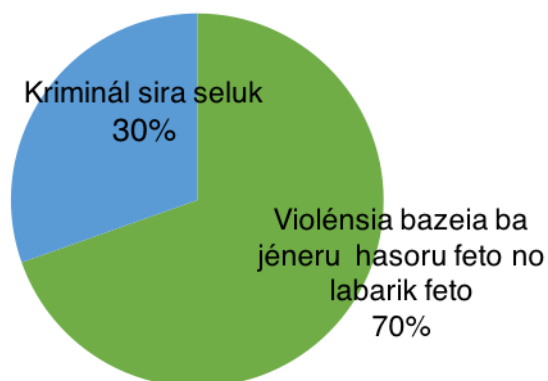
In 2020, JSMP managed to monitor cases tried by the Mobile Courts. JSMP managed to monitor 244 cases. The graph below shows the cases monitored by JSMP from 2018 until 2020.

Graph 3: Trials conducted by the mobile courts from 2018 until 2020 that were monitored by JSMP



This report includes analysis of cases involving gender based violence that were processed by the courts. Graph 4 below illustrates the high number of cases involving gender based violence processed by all of the courts. The statistical data that JSMP obtained from the courts did not provide specific information about the nature of the crimes, therefore it is difficult for JSMP to compare the most common types of crimes processed by the courts.

Graph 4: Cases of gender based violence committed against women and girls in comparison with other criminal cases monitored by JSMP in 2020



In 2020 JSMP monitored 532 cases involving gender based violence. From these 532 cases, there were 494 cases involving women and girls as victims and 38 cases involving men and boys as victims. These cases made up 74.9 percent of a total number of 710 criminal cases monitored by JSMP in 2020. These statistics show that there are still many cases involving gender based violence at the courts, and most often these crimes are committed against women and children (70%) in comparison with men and boys (only 5%).

Just like in previous years, in 2020 JSMP observed that the charges of the prosecution in some cases of domestic violence did not select the appropriate article in accordance with the seriousness of the case which resulted in decisions that were inadequate. Prosecutors need to consider the objects used to carry out crimes, such as bladed weapons or pieces of steel, which pose a danger to the health or life of the victim. Also, most cases of domestic violence did not refer to international conventions ratified by the State such as CEDAW and the International Convention on the Rights of the Child.

However, in some cases prosecutors charged defendants with Article 154 of the Penal Code on mistreatment of a spouse. This means that prosecutors are aware that Article 154 of the PC is the more specific article in cases of domestic violence. However, this has been inconsistent, which has created a lot of confusion in practice about which article is more relevant in cases of domestic violence.

In 2020 the courts continued to apply suspended prison sentences in most cases characterized as DV in comparison with other penalties. This was also the case in many DV cases in previous years.

If the courts continue to apply suspended sentences without any obligations, this can send a message to defendants and society that domestic violence is not a serious crime. Also, suspended sentences without monitoring or observation by competent entities will not prevent defendants from reoffending whilst serving the suspended sentence.

In relation to this issue, JSMP again recommends for the Ministry of Justice and the courts to develop guidelines on sentencing in cases of domestic violence with the application of rules of conduct for suspended prison sentences as appropriate and adequate measures to protect against crimes of domestic violence in accordance with principles set out in the Penal Code and the Law Against Domestic Violence.

Cases involving rape are a massive problem for women and girls because they are the victims in most cases. These crimes are complex acts and impede the development of victims because they suffer serious psychological problems and there is the possibility that victims will live with trauma throughout their entire life. This is especially the case when a defendant is closely related to the victim (incest).

Ordering a defendant to pay civil compensation is a means of redressing a victim's suffering and harm as the result of a defendant's behaviour that has had a serious psychological effect on the victim. However, in 2020 most cases did not include civil compensation. Only one case applied civil compensation. Also, JSMP noted that in some cases of rape the prosecution did not charge the defendant with the appropriate articles and only used the article on rape without including the article on aggravation. Also, some cases involved defendants who were responsible for the care of children, including family members or under employment, and the specific article was not used (Article 155 on mistreatment of a minor).

In 2020 JSMP noted that there was a change or some progress in the drafting of charges by the Public Prosecution Service in a case of infanticide, because the indictment did not only charge the defendant, but also charged the man who got the victim pregnant and exerted pressure by instigating the crime of infanticide.

JSMP applauds the initiative and good will of the MPs in the National Parliament for approving draft resolution No. 59/V(3rd) on recommendations to the Government to adopt preventative measures in cases on infanticide. JSMP considers that the approval of this resolution will get the attention to all entities, including the Government, judicial institutions, parents, families and churches, so they can take preventative measures, that can reduce the rise in cases involving infanticide and the neglect of babies and children, through the measures recommended in this resolution.⁴

Based on JSMP observations in 2020, the courts continued to face challenges in trials involving disabled persons, for example there were no sign language interpreters, which made it difficult for the courts to establish the facts.

Through this 2020 Overview of the Justice Sector JSMP hopes to inform the public about the current circumstances facing the justice sector in Timor-Leste, and progress achieved and challenges.

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

Draft Law on Judicial Organization

1. Urges the Ministry of Justice and the National Parliament to give priority to the Draft Law on Judicial Organization including holding public consultations on this law, so that the law reflects the circumstances and requirements for the administration of justice in the country.
2. Also urges the Ministry of Justice or the National Parliament to try and have this draft law translated into Tetum to be distributed to the public prior to public consultation. Therefore, everyone will be able to understand the contents of this law and can better contribute to this law.

⁴ https://jsmp.tl/wp-content/uploads/PrPNAprovaRezolusaunbaAsuntuINFANTESIDIU_TETUM.pdf

Need for Timor-Leste to have an agreement on extradition

3. Need to establish an agreement on extradition to arrest perpetrators who flee to other nations (abscond from justice).
4. Need to reinforce the work of the Intelligence Police in Timor-Leste including cooperation with Interpol Police to combat drug trafficking.
5. Reinforce the work of immigration and provide this service with more modern facilities to control goods at the border to prevent citizens from becoming the victims of transnational crimes.

Mobile Courts

6. Decentralize budgets for each of the district courts and the Office of the Public Defender so they can manage and allocate funds based on their needs, especially MOP/per-diem allowances for judges, public defenders and judicial officers.
7. Urges the Court of Appeal to give priority to allocating appropriate funding for the mobile court program and to remove the complicated bureaucratic system. Also, the Office of the Public Defender needs to manage its own budget.

Accessibility of trials at the Court of Appeal

8. The Court of Appeal needs to conduct trials and hearings that are open to the public when deciding cases at the level of appeal, to ensure impartiality in the decisions of the courts, so that the parties can feel satisfied in relation to their cases.
9. The Court of Appeal should deploy another judge counsellor to the Court of Appeal to form a panel of judges when there is an ordinary appeal.
10. The Court of Appeal should ensure that the court website is maintained in a manner that is accessible and updated, so that the public, and the parties who are involved in a matter, will find it easy to access the decision in their case.

Translators at the courts

11. There needs to be an official agreement with translators for non-official languages, dialects and sign language interpreters, to facilitate the work of the courts when required.
12. Continue to provide training to all translators, including for official languages and non-official languages to improve their knowledge of judicial terms.
13. The Court of Appeal needs to recruit more translators for local languages because there is an increasing number of cases being heard at the courts involving parties who do not understand the official languages.

Gender Equality

14. Prosecutors should select the appropriate provisions in cases of domestic violence based on the seriousness and circumstances of each case to ensure that the sentence imposed in each case is proportional and reflective of the defendant's actions.
15. JSMP recommends for the competent entities to effectively monitor the application of additional rules. This is to guarantee the aim of the sentence to reduce crime in society, and to educate other people not to commit crimes in society, especially the crime of domestic violence.
16. Urges the courts, the Ministry of Justice and relevant ministries to create guidelines on suspended prison sentences and rules of conduct and to create effective coercive measures so that the penalties are executed in an efficient manner.

Cases of Rape

17. The courts should include civil compensation in their decisions in cases involving sexual violence to provide assistance to redress the suffering and harm suffered by victims and the serious psychological impact on victims. This also applies to the Public Prosecution Service, to also include the application of civil compensation in their final recommendations.
18. When prosecutors draft charges they should proceed with caution and they need to reflect the seriousness and the circumstances of the crime.

Minors in the justice system

19. The Public Prosecution Service and the courts need to carefully assess each case based on the nature and the circumstances before formulating charges and issuing a decision, in order to ensure protection for children and to prevent other crimes against children.
20. Urges the courts not to consider extraordinary mitigating circumstances in cases characterized as sexual violence
21. Urges prosecutors to use the specific article (155 of the Penal Code on mistreatment of a minor) when charging cases involving child victims.

Crime of incest

22. Incorporate a specific article on incest in the Timor-Leste Penal Code and to not consider the victim's consent or age.
23. Strengthen the provisions in the Penal Code that relate to sexual crimes in circumstances of dependency to discourage and punish defendants who commit sexual crimes and abuse their familial authority or exploit a relationship of dependency.

Crime of infanticide

24. The courts should investigate men who get women pregnant and instigate a crime pursuant to Article 31 of the Penal Code.
25. The State needs to establish conditions for women who have unplanned pregnancies, because they are also victims of the irresponsible actions of men.
26. Urges relevant parties such as the Government, family and the church to comply with this resolution to prevent the crime of infanticide in the future.

Cases involving disabled persons

27. JSMP urges the courts to recruit a sign language interpreter, to help victims and witnesses who have difficulties speaking and hearing.
28. Urges judicial actors to be sensitive when trying cases involving disabled victims.

Civil marriages

29. Urges the Government and the National Parliament to amend the Civil Code to include and recognise other religions.
30. Urges the Council of Ministers to accelerate discussion on the Draft Civil Registry Code to respond to the needs of other non-Catholic religions.
31. If it is not possible to approve the Draft Civil Registry Code, the Government through the Ministry of Justice, needs to issue an instruction to notary services to assist the followers of other religions to obtain official documents from the Government.

INTRODUCTION

This report compiles the results of JSMP's general observations and analysis of developments and challenges including relevant activities that have taken place in the justice system in 2020. The last section of this report contains substantive and practical recommendations to be considered by relevant institutions, that could further improve the justice system in the future.

JSMP congratulates the judicial actors because they have worked hard in 2020, even though they have faced a range of challenges and limitations. JSMP would also like to express its appreciation to the judicial actors who have continued to display their willingness and desire to collaborate with the JSMP team by providing relevant data to facilitate the production of this report.

The structure of the report is as follows:

Section 1 – The state of the justice sector in 2020

This section discusses key developments and challenges faced by the justice sector in 2020 and focuses on the swearing in of new judges, prosecutors and public defenders including the promotion and allocation of judges and the allocation of specific judges for civil cases.

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

Seksaun 2 – Gender Equality

The second section focuses on important issues relating to gender equality including the analysis of cases involving violence against women, with a specific focus on cases of domestic violence and sexual violence. This section also analyses trends of sentencing in 2020.

Section 3 – Minors in the justice system

The third section outlines children's access to the justice system in 2020. This part underlines the need for prosecutors and the courts to identify specific articles for cases involving children. This section also discusses the need for prosecutors to make requests, and for the courts to order defendants to pay civil compensation to victims. Also, emphasis is given to the importance of amending the Penal Code to have a separate article on incest. Also discussed are cases of infanticide, progress and challenges and cases involving disabled persons, including progress and challenges.

Section 4 – Cases involving State authorities

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

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

1. OVERVIEW OF THE JUSTICE SECTOR IN 2020

1.1. KEY DEVELOPMENTS IN THE JUSTICE SECTOR

In 2020 the justice sector continued to show important progress, even though at the same time the justice sector also continued to face challenges which impacted on the administration of the justice sector in general, such as the political impasse and the use of the duodecimal budget during 2020. Also, the State of Emergency relating to COVID-19 (Corona Virus Disease 2019)⁵, had a major impact on the normal functioning of the courts for two months. In these circumstances the courts only attended to urgent cases such as summary proceedings, cases where the defendant were being held in prison and cases that needed to be decided. The courts only normalized their work at the start of June 2020 with the need to comply with mechanisms for COVID-19 prevention⁶, based on the Presidential Decree extending the third State of Emergency⁷.

Important developments that JSMP consider to be advances in the justice sector during 2020 included the swearing in of new judicial actors, the allocation of judges as well as the mobile court being activated at the Oecusse District Court.

1.1.1. Swearing in of new judges, prosecutors and public defenders including the allocation of judges

The judicial sector increased its human resources in 2020. 13 trainee judicial actors were sworn in as permanent judicial actors, comprising 3 judges, 5 prosecutors and 5 public defenders. All of these new prosecutors and public defenders were allocated to the Dili District Court. The three judges were allocated respectively to the Dili District Court (DDC) the Suai District Court (SDC) and the Oecusse District Court (ODC). In addition to the swearing in of new judicial actors in 2020, the Court of Appeal appointed Hugo Pui⁸ as the judge administrator of the Oecusse District Court to replace João Riberio who served for more than ten years at the Oecusse District Court.

Appointment of a judge to the ODC, in June 2020 the Court of Appeal appointed another judge to the ODC to support the judge who for many years has been operating alone to attend to cases heard by a single judge in this jurisdiction. Cases heard by a panel of judges required two judges from the DDC based on the schedule of hearings that normally occurred twice a year for one or two weeks.

⁵ On 27 March 2020, the President of the Republic via Presidential Decree No. 29/2020, decreed the first State of Emergency to be applied from 28 March 2020 until 26 April 2020.

⁶ JSMP Press Release on the courts recommencing trials:

<https://jsmp.tl/wp-content/uploads/PR-Tribunál-reativa-fali-julgamentu.pdf>

⁷ Third State of Emergency via Presidential Decree No. 35/2020 to be applied for one month from 28 Maiu until 26 June 2020. After this, the State of Emergency was extended every month until December 2020 with the same conditions.

⁸ Hugo Pui previously served as a judge at the BDC for 8 years

The decision of the Court of Appeal to assign another permanent judge to the ODC marks an important step forward and in the very least will respond to the shortage of human resources at the ODC. Based on JSMP observations, when there was only one judge sometime trials had to be delayed when this judge was ill or had to participate in urgent meetings in Dili and there was no other judge to substitute him. Also, for cases requiring a panel of judges, sometimes trials were delayed because the two judges from Dili were unavailable.

Previously in consultations and through its publications⁹ JSMP urged the Court of Appeal to appoint at least one more judge to the ODC, because in addition to the concerns raised above, the mobile court is now active and it requires resources, and State funds can be saved on travel for cases requiring a panel of judges, because only one additional judge would need to travel from Dili. Also, the presence of these two judges means that they can share the trials, and have time to analyse cases, read references to increase their knowledge and also have time to participate in important events. JSMP hopes that with this increase in human resources, cases will be dealt with more quickly at the ODC.

Appointing specific judges for civil cases, in 2020 the DDC allocated four judges to specifically handle civil cases¹⁰. JSMP believes that the allocation of these four judges is very important because they can focus purely on civil cases and they will have sufficient time to enhance their knowledge in the area of civil law and therefore will be able to respond to certain issues that were mentioned in a JSMP report,¹¹ namely that judges are concerned about handling substantive issues in civil law because they sometimes take time, and require judicial research and a lot of resources, and the trial of civil cases take a long time and are delayed constantly because previously there were no specific judges to handle civil cases, and most of the judges prioritise criminal cases because of the time limitations imposed and also because of those in prison, and this has meant that every year there is a large amount of civil cases that are left pending.

Mobile court starts operating at the Oecusse District Court, and in January 2020 for the first time the ODC conducted a mobile court since the mobile court program began in 2010. This is a positive step forward for the ODC. To date, mobile courts have been operating in just three jurisdictions, namely the DDC, BDC and SDC.¹²

JSMP appreciates the initiative of the Court of Appeal to include the mobile court as part of the activities conducted by the Oecusse District Court and suggests for this service to continue in the future because this is a means to bring justice to the people

⁹ JSMP press release expressing JSMP's appreciation to the Court of Appeal for assigning another judge to the ODC: https://jsmp.tl/wp-content/uploads/PrTRATomaPoseJuisfoun_TETUM.pdf

¹⁰ Edite Palmira dos Reis, Antonio Fonseca and Antonio Helder do Carmo Viana and Francisca Cabral

¹¹ JSMP report on challenges dealing with civil matters: https://jsmp.tl/wp-content/uploads/RelatoriuKontratuProsesu_SIVIL_TETUM.pdf

¹² JSMP appreciates the initiative of the Court of Appeal for activating the mobile court through the ODC: https://jsmp.tl/wpcontent/uploads/PrJulgamentuMOVELTribunáIOEKUSI_TETUM.pdf

and will reduce costs. JSMP recommends for the courts and the national parliament to guarantee funding for mobile trials before establishing permanent courts in the districts as has been planned, because through this program the communities that are very remote or located in rural areas will be able to access formal justice which is often difficult and expensive for them.

1.1.2. Draft Law on Judicial Organization

In 2020 the Draft Law on Judicial Organization was finalized by a team of experts however it was not presented to the Council of Ministers for discussion because the Government gave priority to the COVID-19 pandemic and the National Parliament also had a period of recess.

In its 2019 Overview of the Justice Sector Report, JSMP reported that the Law on Judicial Organization is very important for the justice sector because the aim of this law is to reform and develop the justice sector by carefully considering the judicial institutions in accordance with the conditions, circumstances and needs of Timor-Leste.

Previously, in 2019 the team of experts, comprising the Ministry of Justice, Court of Appeal, Public Prosecution Service, Office of the Public Defender, the Police Forensic and Criminal Investigations (PSIK), the Legal and Judicial Training Centre and representatives of East Timorese lawyers jointly discussed and decided to develop the proposal or draft law on Judicial Organization to replace UNTAET Regulation No. 11/2000.

JSMP hopes that the Ministry of Justice or National Parliament will give priority to this draft law and will hold public consultations so that the law can reflect the circumstances and requirements to administer justice in the country.

Recommendations:

1. Urges the Ministry of Justice and the National Parliament to give priority to the Draft Law on Judicial Organization including holding public consultations on this law, so that the law reflects the circumstances and requirements for the administration of justice in the country.
2. Also urges the Ministry of Justice or the National Parliament to try and have this draft law translated into Tetum to be distributed to the public prior to public consultation. Therefore, everyone will be able to understand the contents of this law and can better contribute to this law.

1.1.3. Need for Timor-Leste to have an agreement on extradition

Extradition means that a nation will hand over a person to another nation when that person is suspected or accused of committing a crime or has been charged as a defendant because the person has committed a crime in the jurisdiction of the country that is asking for the return of this person. An agreement on extradition means an agreement between one nation with another nation to hand over the person.

In previous years some defendants and suspects managed to abscond from justice in Timor-Leste by travelling overseas. However, until now the State of Timor-Leste has made no efforts or has not been serious about bringing these perpetrators back to Timor-Leste to be held accountable for their actions.

The reason that the State cannot get these perpetrators back to Timor-Leste to be held accountable for their behaviour is because Timor-Leste does not yet have an agreement on extradition¹³ with those countries where defendants or suspects have fled to, so the State faces difficulties in getting these perpetrators back to Timor-Leste.

Although an agreement on extradition is the best and easiest way to get perpetrators back to Timor-Leste, the State has to have agreements with other nations, however the reality is that the State has ignored its responsibility in this regard.

Therefore, JSMP suggests for the State to try a different path to resolve this problem, by using a diplomatic approach and cooperation with Interpol (Interpol issues a request for arrest).

This method has been used with Indonesia to bring back fugitives¹⁴ who have fled to other countries even though there is no extradition agreement with the aforementioned country¹⁵.

Also, other challenges faced by the justice sector have related to foreigners who have committed transnational crimes such as drug offences who have used Timor-Leste as a place of transit. Many citizens of Timor-Leste now have to serve prison sentences because they have been proven to have worked with the owner of drugs to import or help deal with drugs to have them exported from Timor-Leste. These citizens of Timor-Leste need to serve prison sentences but the owners of the drugs are not charged or have not been held accountable for their behaviour and have continued to repeat their actions. Based on JSMP observations, in two cases the owner of the drugs was the same person. Therefore, it is necessary to have cooperation or a diplomatic approach to also prosecute the owner of the drugs who is the mastermind of these crimes.¹⁶

Recommendations:

3. Need to establish an agreement on extradition to arrest perpetrators who flee to other nations (abscond from justice).
4. Need to reinforce the work of the Intelligence Police in Timor-Leste including cooperation with Interpol Police to combat drug trafficking.

¹³ Article 35 of the Constitution (Extradition and expulsion) (1) Extradition shall only take place following a court decision (2) Extradition on political grounds is prohibited (3) Extradition in respect of offences punishable, under the law of the requesting State, by death penalty or life imprisonment or whenever there are grounds to assume that the person to be extradited may be subjected to torture and inhuman, degrading and cruel treatment, shall not be permitted

¹⁴ *Case of fictitious letter of credit (L/C) from the BNI bank valued at 1.7 trillion rupiah, Maria Pauline Lumowa.*

¹⁵ <https://nasional.kompas.com/read/2020/07/10/08105541/tak-punya-perjanjian-ekstradisi-begini-cara-pemerintah-bawa-maria-pauline?page=all>

¹⁶ Two drug cases that were decided in September and October 2020

5. Reinforce the work of immigration and provide this service with more modern facilities to control goods at the border to prevent citizens from becoming the victims of transnational crimes.

1.2. RESOURCES IN THE JUSTICE SECTOR

1.2.1. Details of Budget for the Justice Sector in 2020

In October 2020 the National Parliament approved the State Budget for 2020 to give priority to funding for the category of salaries and wages and also goods and services, whereas for the categories of transfers, minor capital and capital and development, most of the justice sector don't have funds. Also, from January to September 2020, the State, including the justice sector, operated using the duodecimal budget.

This situation was made even more difficult for the justice sector because the duodecimal budget and the 2020 State Budget did not respond to priority needs that have to date been a challenge in guaranteeing that their work could function effectively.

1.2.2. Budget for the Ministry of Justice

The budget for the Ministry of Justice totalled US\$11,609,000 and this budget approval indicated a reduction of US\$10,374,000 from the 2019 budget of US\$21,983,000. The approval of this budget did not result in significant changes to the justice system in Timor-Leste, and specifically did not reflect the recommendations outlined by JSMP in its 2019 Overview of the Justice Sector Report regarding the challenges faced by the Office of the Public Defender. JSMP acknowledges that these circumstances occurred because the State was only using a duodecimal budget for a long period, as well as the 2020 State Budget which was approved on 8 October 2020 and was promulgated by the President of the Republic on 19 October 2020 by only giving priority to salaries and wage and also goods and services.

Table 1: 2020 Budget for the Ministry of Justice and comparison with the 2019 State Budget

Category	2019 State Budget	2020 State Budget	Variation
Salaries & wages	US\$ 4,750,000	US\$ 4,614,000	(-) US\$ 136,000
Goods and services	US\$ 15,679,000	US\$ 6,459,000	(-) US\$ 9,220,000
Transfers	US\$ 335,000	(-)	(-) US\$ 335,000
Minor capital	US\$ 1,025,000	US\$ 343,000	(-) US\$ 682,000
Capital and development	US\$ 193,000	US\$ 194,000	(+) US\$1,000
Total Budget	US\$ 21,983,000	US\$ 11,609,000	(-) US\$ 10,374,000

Table 2: Budget for the Ministry of Justice according to each directorate in comparison with the 2019 State Budget

Institution	2020 State Budget	2019 State Budget	Comparison with 2019 State Budget
Office of the Ministry of Justice	US\$ 134,000	US\$223,000	The budget was US\$89,000 less for the category of salaries and wages and goods and services especially the items for local travel and operational expenses, and there were no other items.
Office of the Vice Minister of Justice	US\$ 75,000	US\$125,000	The budget was US\$50,000 less for the category of salaries and wages and goods and services. Goods and services did not have an item for local travel and operational expenses, and there were no other items.
Office of the Secretary of State for Land and Property	US\$ 105,000	US\$132,000	The budget was US\$ 270,000 less for the category of salaries and wages and goods and services. Goods and services did not have an item for local travel, rent of property, installations of facilities and operational expenses, and there were no other items.
General Directorate for Political Administration and Justice	US\$ 80,000	US\$113,000	The budget was US\$ 33,000 less for the category of goods and services for the items of local travel, professional training, installation of facilities, operational expenses and professional services. Budget was reduced for the category of minor capital for the item of purchasing vehicles. The category of salaries and wages increased by US\$ 1,000 for the item of overtime, and there were no other items.
Office for Inspections and Audit	US\$ 103,000	US\$126,000	The budget was US\$ 23,000 less for the category of goods and services for the items of local travel, professional training and operational expenses. From this budget there was an increase of

			US\$ 1,000 for the category of salaries and wages for the item of overtime. There were no other items.
National Directorate of Administration and Finance	US\$ 5,310,000	US\$13,316,000	The budget was US\$ 8,006,000 less for the category of salaries and wages, goods and services and the items of local travel, overseas travel, professional training, installation of facilities, fuel for operational vehicles, maintenance of vehicles, office supplies, operational supplies, fuel for generator, maintenance of building equipment, professional services, other services and also the category of transfers. Minor capital was reduced for the items of purchasing vehicles, IT equipment, security equipment, communications equipment, other equipment, furniture and office accessories, office equipment and water equipment.
National Directorate of Judicial Advice and Legislation	US\$107,000	US\$174,000	The budget was US\$67,000 less for the category of salaries and wages, goods and services and items for local travel, professional training, professional services, and also the category of transfers.
National Directorate for Human Rights and Citizenship	US\$ 107,000	US\$175,000	The budget was US\$ 68,000 less for the category of salaries and wages, goods and services for the items of local travel, professional training and operational expenses.
National Directorate of Registry and Notary Services	US\$ 977,000	US\$1,944,000	The budget was US\$ 967,000 less for the category of goods and services for the items of local travel, professional training, installation of facilities, office supplies, operational expenses, professional services and other services. Also funding was

			reduced for the category of transfers and capital and development.
National Directorate for Prison Services and Community Reinsertion	US\$ 2,258,000	US\$2,472,000	The budget was US\$ 214,000 less for the category of salaries and wages, goods and services for the items of local travel, operational supplies, other services. The total budget for this directorate saw the allocation of US\$ 97,000 to the category of capital and development.
Legal and Judicial Training Centre	US\$ 128,000	US\$203,128	The budget was US\$ 75,000 less for the category of goods and services for the items of local travel, installation of facilities, operational expenses, professional services, as well as the category of transfers.
Office of the Public Defender	US\$ 1,408,000	US\$1,535,000	The budget was US\$ 127,000 less in comparison with the State Budget.
General Directorate of Land and Property	US\$ 818,000	US\$1,446,000	The budget was US\$ 628,000 less for the category of salaries and wages, goods and services and for the items of local travel, professional training, installation of facilities, operational expenses and professional services.

1.2.3. State Budget allocation for the courts

In the 2020 State Budget the courts received funds of US\$6,014,000 with US\$3,387,000 allocated for salaries and wages and US\$2,627,000 for goods and services. There were no funds for minor capital and capital and development. The 2020 State Budget allocation for the courts was US\$1,527,000 less in comparison with the 2019 State Budget allocation which was US\$7,541,000. The following information outlines the 2020 State Budget allocation for the courts:

Table 3: State Budget Allocation for the Courts

Institution	2019 State Budget	2020 State Budget Allocation to the	Comparison with 2019 State Budget
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		Courts	
Superior Council for Judicial Magistrates	US\$ 64,000	US\$ 11,000	(-) US\$53,000
Court of Appeal	US\$ 5,725,000	US\$ 4,714,000	(-) US\$1,011,000
District Courts	US\$ 1,751,000	US\$ 1,289,000	(-) US\$ 462,000

The tables and description above show that there has been a massive reduction in funding to each directorate as well as for each budget category for the courts. JSMP provides a clear example in the table of funding for the courts which shows an allocation to the district courts for the item of office supplies for the small amount of US\$10,000¹⁷ whereas there is no allocation for operational supplies.

JSMP believes that the funding for this item is very small and does not respond to the real circumstances at the courts in relation to JSMP's findings about limited facilities in the courts, because these facilities are a priority to ensure that the courts can carry out their duties effectively. Even so, JSMP acknowledges that the Court of Appeal has achieved other progress in 2020, as the Court of Appeal has allocated funding to construct a new building for the DDC which is currently under construction.

1.2.4. State Budget Allocation for the Public Prosecution Service

The 2020 State Budget allocated US\$4,084,000 to the Public Prosecution Service with US\$1,904,000 allocated to the category of salaries and wages, US\$1,609,000 to goods and services and US\$ 572,000 to capital and development. The 2020 State Budget allocation was US\$442,000 less in comparison with the 2019 State Budget Allocation which was US\$ 4,526,000.

Table 4: State Budget Allocation for the Public Prosecution Service

Institution	2019 State Budget	2020 State Budget Allocation to the Courts	Comparison with 2019 State Budget
Office of the Prosecutor General	US\$ 3,538,000	US\$3,478,000	(-) US\$60,000
Bacau District Prosecution Unit	US\$ 411,000	US\$ 282,000	(-) US\$ 129,000
Suai District Prosecution	US\$ 360,000	US\$ 194,000	(-) US\$ 166,000

¹⁷ <https://www.laohamutuk.org/econ/OGE20/third/BB4BPtEn.pdf>

Unit			
Oecusse District Prosecution Unit	US\$ 217,000	US\$ 130,000	(-) US\$ 113,000

The Public Prosecution Service achieved a number of things in 2020. For example, placing the first stone to construct a building for the Public Prosecution Service and two residences in Lautem Municipality, with construction underway. Also a separate building is being constructed for the Central Office to Combat Corruption and Organised Crime.

In general, JSMP considers that the Public Prosecution Service has good facilities, however some of the operational cars are out of service, for example at the Baucau District Prosecution Unit, one car used by the prosecutors is out of service and has been awaiting maintenance for nearly one year. Meanwhile at the Suai District Prosecution Unit two operational cars and five motorcycles are out of service and therefore only one car is being used to provide notifications and carry out other essential work. Also, the Suai District Prosecution Unit still does not have a place to store objects of crimes, even though JSMP raised this issue two years ago.

1.2.5. State Budget Allocation for the Office of the Public Defender

In the 2020 State Budget the Office of the Public Defender received funding of US\$1,408,000 which is US\$127,000 less in comparison with the 2019 State Budget which was US\$ 1,535,000. The following table shows the budget allocations for the Office of the Public Defender.

Table 5: State Budget Allocation to the Office of the Public Defender

Budget Category	2020 State Budget Allocation to the Office of the Public Defender	2019 State Budget	Comparison with 2019 State Budget
Salaries and Wages	US\$ 1,271,000	US\$1,205,000	Increase of US\$ 66,000 to salaries and wages as well as an allocation of US\$10,000 for overtime in comparison with the 2019 State Budget of US\$1,205,000
Goods and Services	US\$ 49,000	US\$209,000	US\$ 160,000 less in comparison with the 2019 State Budget of US\$

			209,000. This reduction was made to the items of local travel, installation of facilities, operational expenses as well as professional services.
Transfers	US\$0	US\$8,000	US\$ 8,000 less in comparison with the 2019 State Budget of US\$ 8,000
Minor Capital	US\$0	US\$0	No change, still zero since the 2019 State Budget.
Capital and Development	US\$ 88,000	US\$113,000	US\$ 25,000 less in comparison with the 2019 State Budget of US\$ 113,000, especially the item of equipment for infrastructure.

Regarding the budget for the Office of the Public Defender, most reductions were in the category of goods and services for the item of operational expenses because in the 2019 State Budget US\$15,000 was allocated, but in the 2020 State Budget this was reduced significantly to US\$1,000¹⁸. For other items such as purchasing operational vehicles, fuel for operational vehicles, maintenance of operational vehicles and operational supplies, there were no funds.

This budget is at odds with the circumstances of the Office of the Public Defender in general, because JSMP found that nearly all of the offices in the districts are facing many limitations, for example some public defenders don't have a computer, don't have a printer, don't have fuel for operational vehicles and lack operational vehicles to participate in mobile trials, make visits to prison and other important activities. For example in 2020 the Oecusse District Office of the Public Defender did not have any operational vehicles because one car and two motorcycles were out of service and no maintenance has been provided, and there was no fuel for operational purposes.

Also, public defenders and judicial officers in the district offices often use their own money for per diems to participate in the inspection of crime scenes, the maintenance of operational cars and motorcycles, to participate in the mobile court and to visit prisoners, but they have not yet received money for reimbursement for the entire year. The Baucau District Office of the Public Defender also faced challenges because there was no fuel for operational vehicles, a lack of operational transport, no printer and the room for public defenders was not big enough for four public defenders to sit together, there is no space and no separate room to meet with

¹⁸ <https://www.laohamutuk.org/econ/OGE20/third/BB4BPtEn.pdf>

clients which happens in the Dili District and Suai District Offices of the Public Defender.

1.3. MOBILE COURTS

Mobile courts were established by the Court of Appeal with the aim of bringing justice to the vulnerable members of the community in rural areas who find it difficult to access justice due to remoteness, economic circumstances or lack of public transport.

Previously, the mobile court program was supported by UNDP from 2010 until 2018, however in 2019 UNDP decided to stop supporting the mobile courts, therefore the mobile court program did not operate during the entire year because there were no funds. Although the 2019 State Budget allocated funds for fuel, local travel and the maintenance of court vehicles, the Court of Appeal did not support the mobile court program, therefore for the entire year the courts did not conduct any mobile trials¹⁹.

Meanwhile in 2020 the Court of Appeal allocated funds for fuel, local travel and maintenance to continue the mobile court program but with a smaller amount in comparison with the 2019 State Budget. The budget is described in the table below:

Table 6: Comparison of funds for local travel, fuel and maintenance of vehicles between 2019 and 2020 for mobile trials

No.	Item	2019	2020
1	Fuel	US\$ 32,000	US\$ 15,000
2	Money for local travel	US\$ 73,000	US\$ 69,000
3	Maintenance of vehicles	US\$ 53,000	US\$ 27,000

JSMP praises the Court of Appeal for reactivating the mobile courts after they ceased to function for the entire year of 2019, as well as the ODC which for the first time conducted mobile trials in 2020. However, JSMP notes that in addition to reduced funding in 2020²⁰, the district courts also continued to face challenges in relation to funding for local travel (*perdiem*) because for most trials the judges and judicial officers used their own money to participate in mobile trials and the process of reimbursement took a very long time. This was also the case with fuel. In interviews between JSMP and court officers, they said that they use their own money when they

¹⁹ <https://jsmp.tl/wp-content/uploads/Tribunál-Distritál-Suai-sofre-problema-sériu-kona-ba-kombustivel-ba-transporte-operasionál-desde-Janeiru-2019-no-prejudika-funsionamentu-regular-tribunál-refere-27-Maiu-2019-2.pdf>

²⁰ Reduction of 2019 State Budget to 2020:

1. Fuel for operational vehicles reduced by US\$17,000
2. Local travel reduced by US\$4,000
3. Maintenance of operational vehicles reduced by US\$26,000

travel and this is very difficult for them because when they are in remote areas they don't have enough money to pay for accommodation and food which are expensive.

In addition to the courts, the Office of the Public Defender (public defenders and judicial officers) also face the same challenges relating to per diems because they use their own money when they travel and it takes a long time to get reimbursed. This is also the case with fuel, because they use their own money to purchase petrol for the vehicles they use for mobile trials. Although the State will reimburse their expenses, these circumstances are detrimental to the judicial actors, especially judicial officers who sometimes don't have enough money when they travel.

JSMP considers that these circumstances have not changed at all because of the centralized and bureaucratic administration at the Court of Appeal, and the Office of the Public Defender does not manage its own budget and is subordinate to the Ministry of Justice.

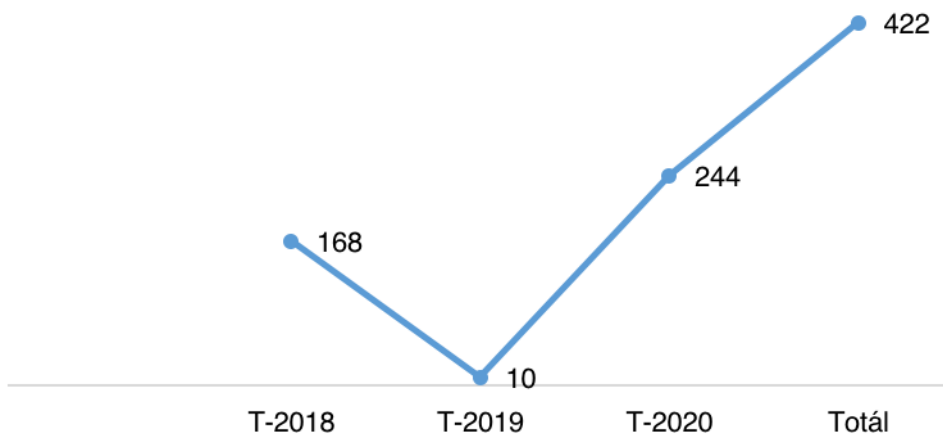
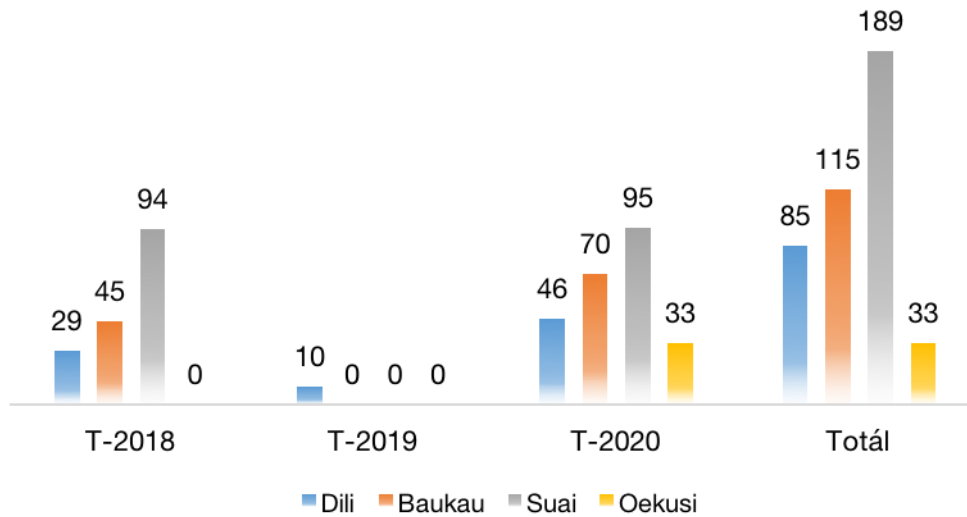
Also JSMP has observed that the locations used to conduct mobile trials are still inappropriate, because sometimes PNTL buildings are being used to conduct trials as well as the office of the Public Prosecution Service. Some of these spaces are very limited and there are not enough chairs so many of the parties have to remain standing so the public also don't have any access. For many years JSMP has been concerned about the spaces used to conduct these trials, especially the PNTL building, because community members, especially defendants, will feel under pressure and there is the perception that the police have the competence to decide their cases.²¹

Table 7: Mobile trials from 2018 to 2020 monitored by JSMP at the courts

Jurisdiction	2018	2019	2020	Total
Dili	29	10	46	85
Baucau	45	-	70	115
Suai	94	-	95	189
Oecusse	0	-	33	33
Total	168	10	244	422

Graph 5: Mobile trials from 2018 to 2020 that were monitored by JSMP at the courts

²¹https://jsmp.tl/wpcontent/uploads/2016/01/PrTribunálMovelViquequenoManatutoLinguaFatinSaiObstaklu_Tetuml.pdf



The table above shows that the productivity of mobile trials increased in 2020 in comparison with the two previous years (2018 and 2019), despite the Covid-19 Pandemic.

Recommendations:

6. Decentralize budgets for each of the district courts and the Office of the Public Defender so they can manage and allocate funds based on their needs, especially MOP/per-diem allowances for judges, public defenders and judicial officers.
7. Urges the Court of Appeal to give priority to allocating appropriate funding for the mobile court program and to remove the complicated bureaucratic system. Also, the Office of the Public Defender needs to manage its own budget.

1.4. PRODUCTIVITY AND ACCESSIBILITY OF TRIALS AT THE COURT OF APPEAL

In terms of hierarchy the Court of Appeal is the highest court and also has the competence as the Supreme Court of Justice as set out in Article 124 and Article 126 of the Constitution. Administratively the district courts are subordinate to the Court of Appeal.

In 2020 the Court of Appeal registered 187 new criminal cases, and 64 new civil cases. There were 79 criminal cases and 16 civil cases pending from 2019. The Court of Appeal managed to finalise 325 cases and there are only 21 cases pending in 2020 comprising 7 criminal cases and 14 civil cases. This is massive progress because the Court of Appeal managed to reduce a huge number of pending cases.

However, JSMP continues to raise the issue regarding the accessibility of trials at the Court of Appeal. JSMP observed that in 2020 in relation to trials or renewal of cases the Court of Appeal continued with deliberations only, or there were no hearings open to the public pursuant to Article 306 of the Criminal Procedure Code. Trials before the Court of Appeal were completely closed to the public, without access to the public or the parties (appellant and respondent) as parties involved in this process. Almost all rulings were announced via written notification only.

Even though the law allows the Court of Appeal to make deliberations without a trial, however in the very least the Court of Appeal should hold a hearing to read out its ruling to help the parties obtain information and clarity about the decision and understand the reasons for losing or winning a case, and also so that the parties will have no doubts about the decision and will accept the decision.

Another issue relates to the number of judges at the Court of Appeal. The Court of Appeal only has four judges who carry out their duties at this court. With the limited number of judges it is very difficult for the Court of Appeal to function when there is an extraordinary appeal. There are not enough judges to form a panel for an extraordinary trial because the judges who formed a panel for the first appeal would then form a panel for the extraordinary appeal and this would pose a problem regarding the composition of the panel.

Other challenges relating to the Court of Appeal are the lack of a system to provide access to the website of the Court of Appeal so that the public can promptly access decisions from the Court of Appeal and also from the district courts, because the information provided on the website is not updated and the website has limited capacity and is not accessible²². To date, members of the public who need to obtain information or find out about proceedings must write a request to the court in order to access decisions.

Recommendations:

8. The Court of Appeal needs to conduct trials and hearings that are open to the public when deciding cases at the level of appeal, to ensure impartiality in the

²² The court website is available at: www.tribunál.tl

decisions of the courts, so that the parties can feel satisfied in relation to their cases.

9. The Court of Appeal should deploy another judge counsellor to the Court of Appeal to form a panel of judges when there is an extraordinary appeal.
10. The Court of Appeal should ensure that the court website is maintained in a manner that is accessible and updated, so that the public, and the parties who are involved in a matter, will find it easy to access the decision in their case.

1.5. TRANSLATORS AT THE COURTS

Based on JSMP monitoring during 2020 the district courts continued to experience the same problems with translators. Translators faced significant obstacles in interpreting from Portuguese to Tetum or Tetum to Portuguese as well as from Tetum to English or Tetum to Mandarin, Tetum to dialects or sign interpreting. This is despite the fact that in 2019 and 2020 permanent translators participated in training on Portuguese judicial materials.

JSMP is very concerned about this problem because if translators cannot interpret properly this will have an impact on the quality of evidence.

The challenges faced by the district court in relation to languages are set out below:

1.5.1. Dili District Court

The Dili District Court has 3 (three) permanent translators, from Portuguese to Tetum, Indonesian to Tetum. Meanwhile from English to Tetum, a translator is based at the Court of Appeal. When other languages are used, such as Mandarin to Tetum and from local languages to Tetum, the courts have temporary contracts with external translators and sometimes they use officers who understand dialects. Nevertheless, JSMP remains concerned because this can undermine the main duties of the officers, because it is not their responsibility to provide interpreting. Also, another challenge is the use of sign language in cases involving disabled persons. In 2020 JSMP registered some cases involving deaf persons and the court did not have a trained interpreter to facilitate this process.

Also, during the mobile trial in Ermera Municipality, the court decided to appoint a judicial officer to provide interpretation from Mambae to Tetum during the trial of a case involving the crime of sexual abuse of a person incapable of resistance characterized as domestic violence because the victim did not understand Tetum and was mute. In this case the defendant was the father of the victim (incest).

Even though the court has a list of translators, there is no official contract or no permanent contract, so they have no obligation to meet the needs of the court. In the end the court cannot obtain translators and this impacts on trials that have to be adjourned.

1.5.2. Baucau District Court

In 2020 JSMP observed that the Baucau District Court continued to face problems with translators. In February 2020 the Baucau District Court through the mobile court in Lautem Municipality conducted a trial in a case of obstructing public authority and use of a bladed weapon against a member of the Lautem PNTL. During the trial the defendants were unable to speak Tetum therefore the courts appointed a female police officer to interpret from Fataluku to Tetum. JSMP is concerned that the court appointed a police officer to act as an interpreter because such people will have difficulty translating judicial terms that are used during a trial.

1.5.3. Suai District Court

In 2020 the Suai District Court conducted a trial in a case of defamatory false information and the defendants did not understand Tetum. Therefore the court decided to appoint a judicial officer to interpret from Tetum into the local language of Bunak. Also, during the mobile trial the court had no translator so sometimes the judges did their own interpreting and sometimes judicial officers helped with interpretation during the trial.

1.5.4. Oecusse District Court

In 2020 the Oecusse District Court continued to have problems with translators, especially from Tetum into the local language of Baikenu. Based on JSMP observations, during some trials there were trained interpreters but they still faced difficulty when interpreting judicial terms into Baikenu. Also, JSMP observed that to date the Oecusse District Court has no translator into English or other foreign languages.

Just like the other courts, at the Oecusse District Court sometimes public defenders and prosecutors spoke up to provide explanations to the parties in relation to judicial terms.

Table 8: Public Defenders and public prosecutors helped provide explanations to the parties

Date	Translator	Languages	Case Type	Oecusse Municipality
8 January 2020	Public Defenders and Prosecution	Tetum - Baikenu	Crime of simple offences against physical integrity characterized as domestic violence	Oecusse

8 July 2020	Public Defenders and Prosecution	Tetum - Baikeno	Crime of sexual coercion and simple offences against physical integrity characterized as domestic violence	Oecusse
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Recommendations:

11. There needs to be an official agreement with translators for non-official languages, dialects and sign language interpreters, to facilitate the work of the courts when required.
12. Continue to provide training to all translators, including for official languages and non-official languages to improve their knowledge of judicial terms.
13. The Court of Appeal needs to recruit more translators for local languages because there is an increasing number of cases being heard at the courts involving parties who do not understand the official languages.

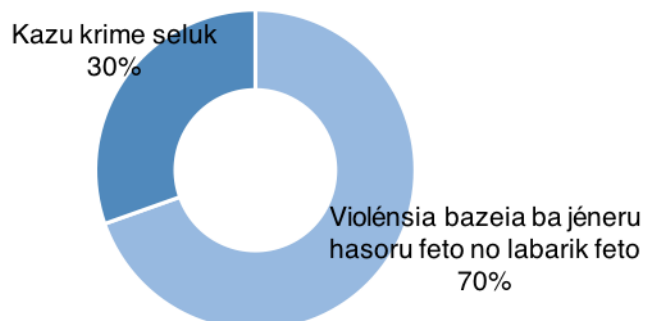
2. GENDER EQUALITY

2.1. CASES INVOLVING GENDER BASED VIOLENCE

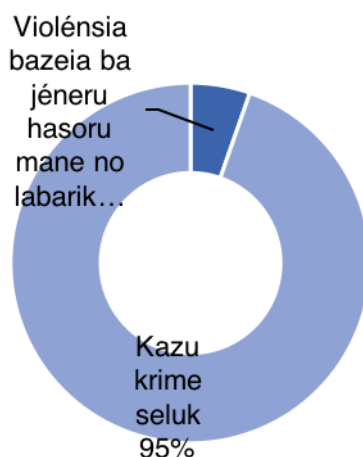
In 2020 JSMP monitored 532 cases involving gender based violence. From these 532 cases, there were 494 cases involving women and girls as victims and 38 cases involving men and boys as victims. These cases made up 74.9 percent of a total number of 710 criminal cases monitored by JSMP in 2020. These statistics show that there are still many cases involving gender based violence at the courts, and most

often these crimes are committed against women and children (70%) in comparison with men and boys (only 5%).

Graph 6: Cases of gender based violence committed against women and girls in comparison with other criminal cases monitored by JSMP in 2020

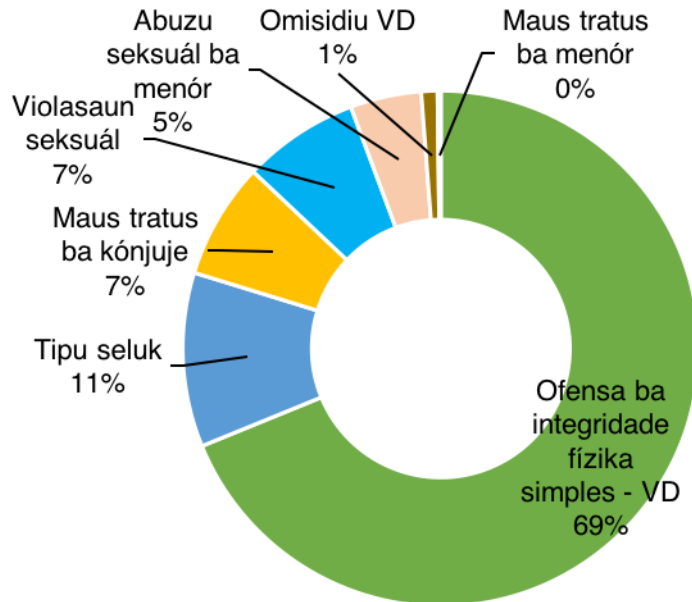


Graph 7: Cases of gender based violence committed against men and boys in comparison with other criminal cases monitored by JSMP in 2020



The graph below shows cases of gender based violence committed against women and girls, categorised as simple offences against physical integrity characterized as domestic violence 69%, mistreatment of a spouse 7%, rape 7%, sexual abuse of a minor 5%, aggravated homicide characterized as domestic violence 1% and other types of crime 11%.

Graph 8: Gender based violence against women and girls monitored by JSMP in 2020



These statistics show that women and girls continue to be victims in cases of domestic violence and sexual violence. JSMP acknowledges that the State has a range of policies to protect women and children from violence, but considering the situation mentioned above, JSMP encourages all entities to contribute towards promoting a policy of zero tolerance towards any form of violence against women and girls.

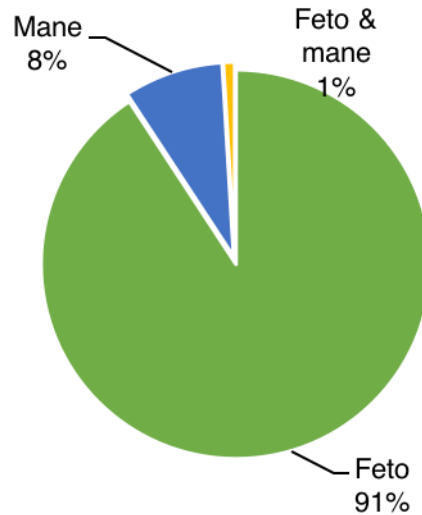
2.2. CASES OF DOMESTIC VIOLENCE

Domestic violence continues to be of public concern, because a high number of cases involving domestic violence continue to be registered on a daily basis in all of the courts. Many women and children continue to suffer a range of abuse or violence as the result of domestic violence.

2.2.1. Statistics on cases of Domestic Violence

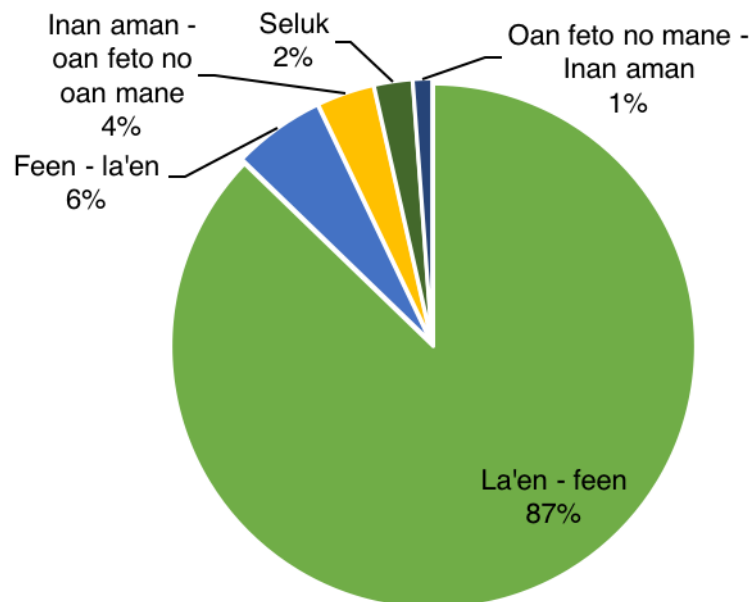
In 2020 JSMP monitored 423 cases involving crimes characterized as DV. The graph below shows that from these 423 cases of DV most often the victims were women (91%) in comparison with men who were just 8%. This means that many women continue to be victims of crimes committed by men in the domestic sphere as shown in the graph below.

Graph 9: Cases characterized as domestic violence according to the sex of the victim



The graph below shows that most crimes characterized as DV are committed by husbands (87%) against their intimate partners or wives. This does not mean that wives do not commit crimes, because there are also cases where wives have committed crimes against their husbands or partners but the percentage is quite small, at only 6%. This graph also shows that wives continue to remain unsafe even when living with their partners or husbands who are supposed to provide protection in their household.

Graph 10: Cases characterized as domestic violence according to the relationship between the defendant and victim



From the 423 cases of DV monitored by JSMP, most of these involved simple offences against physical integrity (378 cases). This is an increase from 2019, where

the total was 294. The next most common crime was mistreatment of a spouse (37) which was not very different to the 2019 total (35).

Table 9: Cases characterized as domestic violence monitored by JSMP during 2020

Case type	Articles	Number of Cases
Simple offences against physical integrity characterized as domestic violence (DV)	Article 145 of the PC & Article 35 of the Law Against Domestic Violence (LADV)	368
Mistreatment of a spouse	Article 154 of the PC	35
Simple offences against physical integrity – DV and threats	Article 145 of the PC & Article 35 of the LADV & Article 157 of the PC	5
Simple offences against physical integrity – DV and use of a bladed weapon	Article 145 of the PC & Article 35 of the LADV & Article 2 No.1 (f) and 20 of Law No. 5/2017	3
Aggravated homicide - DV	Article 139 of the PC & Article 35 of the LADV	3
Mistreatment of a spouse and using a bladed weapon	Article 154 of the PC & Article 2 No.1 (f) and Article 20 of Law No. 5/2017	1
Mistreatment of a spouse and threats	Articles 154 & 157 of the PC	1
Mistreatment of a minor	Article 155 of the PC	1
Simple offences against physical integrity – DV, threats, property damage	Article 145 of the PC & Article 35 of the LADV & Articles 157 & 258 of the PC	1
Simple offences against physical integrity – DV, threats and use of a bladed weapon	Article 145 of the PC & Article 35 of the LADV & Article 157 of the PC & Article 2 No.1 (f) and Article 20 of Law No. 5/2017	1
Aggravated homicide – DV and use of a bladed weapon	Article 139 of the PC & Article 35 of the LADV & Article 2 No.1 (f) and Article 20 of Law No. 5/2017	1
Attempted homicide - DV	Articles 23 & 138 of the PC & Article 35 of the LADV	1
Attempted homicide – DV and use of bladed weapon	Articles 23 & 138 of the PC & Article 35 of the LADV & Article 2 No.1 (f) and Article 20 of Law No. 5/2017	1

Attempt, punishability of attempt and homicide - DV and arson	Articles 23 & 24 & 138 of the PC & Article 35 of the LADV & Article 263 of the PC	1
Total		423

2.2.2. Inconsistencies in the drafting of charges and application of penalties in cases of DV

Just like in previous years, in 2020 JSMP observed that the charges of the prosecution in some cases of domestic violence did not select the appropriate article in accordance with the seriousness of the case which resulted in decisions that were inadequate. Prosecutors need to consider the objects used to carry out crimes, such as bladed weapons or pieces of steel which pose a danger to the health or life of the victim. Also, most cases of domestic violence did not refer to international conventions ratified by the State such as CEDAW and the International Convention on the Rights of the Child.

In some cases prosecutors charged defendants with Article 154 of the Penal Code on mistreatment of a spouse. This means that prosecutors are aware that Article 154 of the PC is the more specific article in cases of domestic violence. However, this has been inconsistent, which has created a lot of confusion in practice about which article is more relevant in cases of domestic violence.

For these reasons JSMP believes that it is necessary to develop legal guidelines for charges and sentencing, so that prosecutors and judges have standard interpretations, to ensure that charges, final recommendations and the application of sentences/decisions adhere to the seriousness, circumstances and potential risks for each crime.

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

2.2.3. Case study

The public prosecutor alleged that on 3 September 2019, at 8pm, the victim rang the defendant because their child was sick but the defendant did not answer the call. Then on 4 September 2019, at 6pm the defendant returned home and the victim immediately asked the defendant for his phone and threw it on the ground. The defendant grabbed the phone and put it on the table and took a hammer and smashed the phone²³.

After smashing the phone the defendant used the hammer (the metal part used to hammer in nails) to strike the victim three times on her back which caused swelling and injury. The victim ran outside and asked for her nephew to take her to the Vera

²³ https://jsmp.tl/wp-content/uploads/SumariukazuTribunalDistritalDILI_TETUM.pdf

Cruz Health Centre for treatment. The actions of the defendant caused the victim to suffer pain, swelling and injury to her back.

The public prosecutor alleged that the defendant violated Article 145 of the Penal Code on simple offences against physical integrity that carries a maximum penalty of three years in prison or a fine as well as Articles 2, 3(a), 35(b) and 36 of the Law Against Domestic Violence.

After evaluating all of the facts, the court found that the defendant struck the victim three times on her back. Based on these facts, and consideration of all of the circumstances, the court concluded the matter and ordered the defendant to pay a fine of US\$ 45.00 to be paid in daily instalments of US 50 cents for 90 days. The court also imposed an alternative penalty of 60 days in prison if the defendant does not pay this fine.

Based on the aforementioned case study, JSMP considers these actions to be serious, based on the object used by the defendant to carry out his actions. The defendant used a hammer (the metal part that is used to hammer nails) to strike the victim on her back. Using a metal hammer endangered the victim's physical health and could also endanger the victim's life. In this case the prosecutor only charged the defendant with the crime of simple offences against physical integrity characterized as DV. Based on the charges the court imposed a fine on the defendant, and JSMP believes that a fine is inadequate in this case.

Recommendations

14. Prosecutors should select the appropriate provisions in cases of domestic violence based on the seriousness and circumstances of each case to ensure that the sentence imposed in each case is proportional and reflective of the defendant's actions.

2.2.4. Trends in sentencing of cases characterized as Domestic Violence

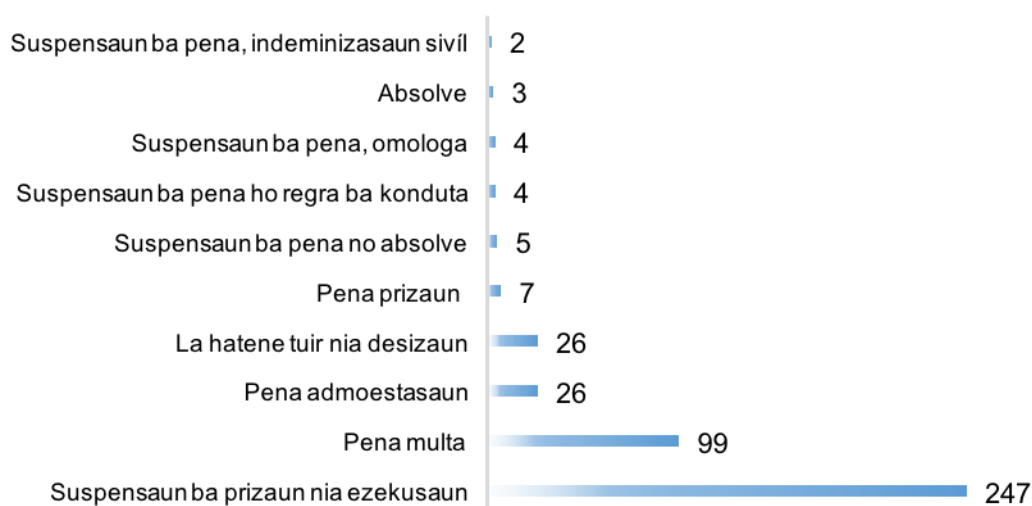
From 423 cases of DV monitored by JSMP, the courts applied suspended prison sentences in 247 cases (58%). In 99 cases (23%) the courts imposed fines, in 26 cases (6%) the court issued admonishments, in 4 cases (1%) the courts applied a suspended prison sentence with rules of conduct, in 7 cases (2%) the courts applied prison sentences, in 4 cases 4 (1%) the courts applied a suspended prison sentence and endorsed and agreement, and in 2 cases (0%) the courts applied a suspended prison sentence and civil compensation. The table below categorises these decisions:

Table 10: Decisions in cases characterized as domestic violence monitored by JSMP in 2020

Type of Decision	Articles	Number
Suspension of execution of a prison sentence	Article 68 of the PC	247

Penalty of fine	Article 67 of the PC	99
Penalty of admonishment	Article 82 of the PC	26
Unknown	-	26
Prison sentence	Article 66 of the PC	7
Suspension of execution of a prison sentence and acquittal	Article 68 of the PC	5
Suspension of execution of a prison sentence & rules of conduct	Articles 68 & 70(g) of the PC	4
Suspension of execution of a prison sentence and validation	Articles 68 of the PC & 216 of the CPC	4
Acquitted		3
Suspension of execution of a prison sentence, civil compensation	Articles 68, 69(a) of the PC	2
Total		423

Graph 11: Decisions in cases characterized as domestic violence that were monitored by JSMP in 2020



2.2.5. In most cases the courts applied suspended prison sentences

As described in 2020, the courts continued to apply suspended prison sentences in most cases characterized as DV in comparison with other penalties. This was also the case in many DV cases in previous years.

If the courts continue to apply suspended sentences without obligations, this can send a message to defendants and society that domestic violence is not a serious crime. Also, suspended sentences without monitoring or observation by competent entities will not prevent defendants from reoffending whilst serving the suspended sentence.

2.2.6. Fines are imposed in a high number of cases involving DV

Fines are one of the main penalties set out in Article 75 of the Penal Code (PC). This article states that the penalty of fine ranges from a minimum of 10 to a maximum of 360 days, except where otherwise provided in law. Each day of fine corresponds to an amount which the court shall determine depending on the economic and financial status of the convict and his or her personal expenses. Fines range from US\$0.50 to US\$200.00 and whenever circumstances surrounding the case so justify, the court the court may authorize the payment of the fine within the period of 1 year, or allow payment in instalments, with the final instalment due no later than two years after the date of rendering of the final decision.

Article 67 of the PC states that application of a prison sentence not exceeding twelve months is substituted for a fine for equal length of time, not exceeding the legal limit, whenever the requirement for preventing future crimes does not require that said prison sentence be served and, in light of the circumstances surrounding the case, the court believes that execution of the sentence should not be suspended altogether.

During this year the courts continued to apply fines in 99 cases of DV (23%) from the total number of 423 cases involving DV. This is an increase from 2019, with fines applied in just 41 cases.

For many years JSMP has been concerned with the applications of fines in cases characterized as DV because fines place a financial burden on the household and also have an impact on the victim. Even though fines are listed as a penalty in the Penal Code, the courts have the freedom to choose to apply a fine against a defendants, however JSMP is still concerned and recommends for the courts not to consider fines when sentencing, especially against defendants who have the financial capacity because this type of penalty will not have a deterrent effect. If the convicted person pays a fine, he has no further responsibility to fulfil an obligation to avoid criminal behaviour.

As stated in its reports, JSMP believes that this practice²⁴ can lead convicted persons and communities to believe that money can resolve cases before the courts ('a person with money will be able to buy justice'). This will not educate convicted persons and the community in general to prevent crime in the future. If the court considers that a fine is the best option, the court needs to comply with the conditions set out in Article 38 of the Law Against Domestic Violence.

For this reason, JSMP continues to recommend for the Ministry of Justice and the courts to develop guidelines on sentencing in cases of DV.

²⁴ JSMP's thorough analysis of sentencing in cases of domestic violence: https://jsmp.tl/wp-content/uploads/2012/05/FINAL_JSMP_Sentensa-alternativa_TDO_Nov-20151.pdf

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

As mentioned above JSMP observed 423 cases involving DV in 2020, and in most of these cases the courts applied a suspended prison sentence without any additional obligations and in only 4 cases (1%) the courts included rules of conduct. This shows that most convicted persons receive their sentence, go home and live in the community without any monitoring of their compliance with other obligations.

As stated in previous reports and analysis, JSMP reiterates that suspended sentences with rules of conduct are a better sanction in comparison with no obligations, because when the courts impose a suspended sentence without rules of conduct such as periodic reporting, many defendants believe that this is not a punishment, and therefore there is a high probability that the defendants will repeat the same behaviour in the future. Therefore, JSMP continues to maintain that suspended sentences without rules of conduct or additional obligations will not have a deterrent effect because the convicted person and victim have a limited knowledge of the formal process regarding this type of sentence.

Even so, until now there is no effective mechanism to monitor defendants who have been given suspended sentences, therefore if a convicted person commits another crime whilst serving a suspended sentence, there is no one to inform the police or the prosecution. JSMP has spoken about and highlighted this issue many times and some judges have managed to issue decisions with suspended prison sentences together with rules of conduct in some cases, but in 2020 this rarely happened.

The Penal Code in articles 69, 70 and 71 allow the courts to *impose* additional orders or rules of conduct together with suspended prison sentences, or to order that the convicted person must be monitored whilst serving his suspended sentence.

Article 69 of the Penal Code allows the court to suspend a prison sentence and order a convicted person to perform certain non-humiliating duties to redress harm caused by the crime.

- a) *The convicted person needs to make or ensure reparation of the damage caused by the crime within a given deadline;*
- b) *To publicly make apologies to the victim*
- c) *To perform certain tasks in connection with the crime committed; or*
- d) *To provide a sum of money to the State or to a charity institution of importance to the reintegration of the convict*

Article 70 of the Penal Code allows the court to impose rules of conduct that the convicted person must comply with for the duration of the suspended sentence. These rules are intended to promote the convicted person's reintegration in society and can include:

- a) *To not exercise certain professions*
- b) *To not visit certain places*

- c) *To not reside in certain places or regions*
- d) *To not accompany, give abode or entertain certain persons*
- e) *To not visit certain associations or take part in certain meetings*
- f) *To not have in the person's possession, certain objects that can potentially facilitate the commission of crime*
- g) *To periodically appear before a court, social reintegration officer or non-police entities.*

These articles show that there are many options for the courts to apply rules of conduct and additional obligations as a practical and simpler means of supervising the convicted person and will deter defendants/convicted persons from repeating their behaviour in the future, especially in cases characterized as domestic violence. Therefore, the courts need to evaluate and explore practical and appropriate means of ensuring that competent entities such as the local authorities can provide supervision to ensure sentences that are effective.

Recommendations:

15. JSMP recommends for the competent entities to effectively monitor the application of additional rules. This is to guarantee the aim of the sentence to reduce crime in society, and to educate other people not to commit crimes in society, especially the crime of domestic violence.
16. Urges the courts, the Ministry of Justice and relevant ministries to create guidelines on suspended prison sentences and rules of conduct and to create effective coercive measures so that the penalties are executed in an efficient manner.

2.3. CASES OF RAPE

Cases involving rape are a massive problem for women and girls because they are the victims in most cases. These crimes are complex acts and impede the development of victims because they suffer serious psychological problems and there is the possibility that victims will live with trauma throughout their entire life. This is especially the case when a defendant is closely related to the victim (incest).

JSMP observed that in many cases civil compensation was applied inconsistently. In 2020 most cases did not include civil compensation. Only one case applied civil compensation.

2.3.1. Statistics on cases of rape

In 2020 JSMP monitored 59 cases of rape. The details are provided in the table below. This number is the same as the total number of cases involving rape that were monitored by JSMP in 2019. These 59 cases represent 11.9% of cases of violence committed against women and girls and 8.3% of the entire 710 criminal cases monitored by JSMP in 2020.

Table 11: Cases involving rape monitored by JSMP in 2020

Case type	Article	Number
Rape	Article 172 of the PC	13
Aggravated sexual abuse of a minor	Articles 177(1) & 182 of the PC	6
Sexual abuse of a minor	Article 177(1) of the PC	6
Sexual coercion	Article 171 of the PC	4
Sexual acts with an adolescent	Article 178 of the PC	4
Aggravated rape	Articles 172 & 173 of the PC	3
Aggravated rape – Incest	Articles 172 & 173 of the PC	2
Attempted sexual abuse of a minor and punishability of attempt	Articles 23, 24 & 177(2) of the PC	1
Aggravated sexual abuse of a minor	Articles 177(2) & 182 of the PC	1
Crime of attempt, punishability of attempt and rape	Articles 23,24 & 172 of the PC	1
Sexual exploitation of a third party	Article 174 of the PC	1
Aggravated sexual coercion – Incest	Articles 171 & 173 of the PC	1
Aggravated sexual abuse of a minor- Incest	Articles 177(2) & 182 of the PC	1
Sexual abuse of a minor	Article 177(2) of the PC	1
Child prostitution	Article 175 of the PC	1
Rape – Incest	Article 172 of the PC	1
Sexual abuse of a person incapable of resistance- Incest DV	Article 179 of the PC & Article 35 of the LADV	1
Sexual abuse of a person incapable of resistance - Incest	Article 179 of the PC	1
Sexual abuse of a minor and continuous crime	Articles 177(1) & 41 (1) of the PC	1
Aggravated sexual abuse of a minor – Incest DV	Articles 177(1) & 182 of the PC & Article 35 of the LADV	1
Sexual fraud	Article 180 of the PC	1
Sexual abuse of a minor - Incest	Article 177(2) of the PC	1
Attempted rape	Articles 23 & 172 of the PC	1
Aggravated sexual abuse of a minor – Incest DV	Articles 177(1) & 182 of the PC & Article 35 of the LADV	1
Aggravated sexual abuse of a minor- Incest	Articles 177(1) & 182 of the PC	1
Attempted sexual abuse of a minor – Incest DV	Articles 23, 177(2) of the PC Article 35 of the LADV	1
Sexual abuse of a person	Article 179 of the PC	1

incapable of resistance		
Crime of attempt, punishability of attempt and rape - Incest	Articles 23, 24 & 172 of the PC	1
Total		59

From the 59 cases monitored by JSMP, 22 cases involved rape, 22 cases involved sexual abuse of a minor, 5 cases involved sexual coercion, 4 cases involved sexual acts with an adolescent, 3 cases involved sexual abuse of a person incapable of resistance, 1 case involved child prostitution, 1 case involved sexual fraud and 1 case involved sexual exploitation of a third party.

The table below shows that most victims were aged 16 or less, namely 27 victims from a total of 59 victims. 23 cases involved victims who were aged 17 and above. This shows that children continue to be vulnerable.

Table 12: Cases involving rape monitored by JSMP in 2020 based on the age of the victim

Age of victim	Number
17 and above	23
Less than 12	12
Unknown	9
Aged 12 – 13	8
Aged 14 – 16	7
Total	59

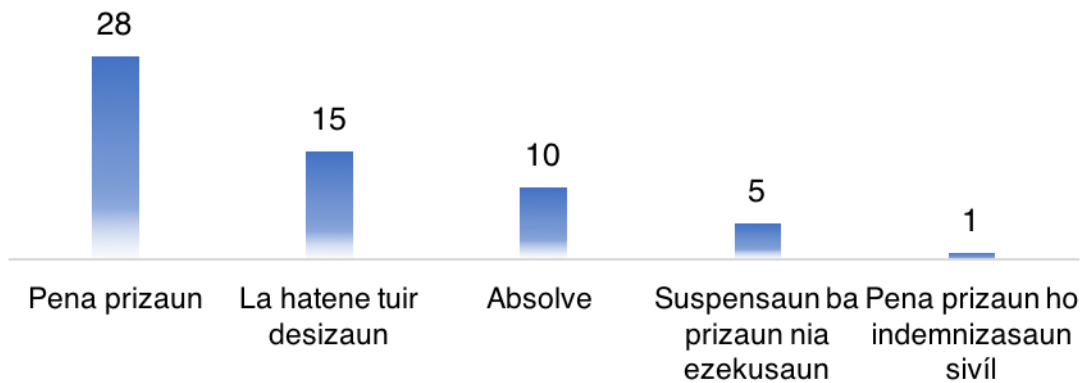
2.3.2. Trends in sentencing for cases involving sexual violence

In 2020 the most common penalty applied in cases of sexual violence was a prison sentence (47%), namely 28 cases from a total of 59 cases involving rape. Meanwhile, the courts acquitted defendants in 10 cases (17%), imposed suspended prison sentences in 5 cases (9%), suspension of execution of a prison sentence and civil compensation in 1 case (2%). Decisions were unknown in 15 cases (25%).

Table 13: Type of decision imposed for each category:

Type of decision	Number	%
Prison sentence	28	47%
Unknown	15	25%
Acquitted	10	17%
Suspended prison sentence	5	9%
Prison sentence with civil compensation	1	2%
Total	59	100%

Graph 12: Type of decision imposed for each category:



Based on these observations, JSMP is still disappointed with the application of penalties that normally don't include civil compensation. From these 59 cases there was only one case that included civil compensation which ordered the convicted person to pay the victim pursuant to Article 284 of the Criminal Procedure Code²⁵ and Article 69 of the PC²⁶.

Victims who suffer violence, including sexual violence, have the right to civil compensation to redress the suffering of the victim, namely psychological and physical suffering, and this right is provided for in the Penal Code, Criminal Procedure Code and the Civil Code.²⁷

Article 72.2 and Article 72.3 of the Criminal Procedure Code on procedural positions provide for civil compensation for victims including civil compensation to the aggrieved party. Article 281.3 (b) of the Criminal Procedure Code on elements required for a sentence states that the sentence ends with an opinion containing the convicting or acquitting decision, including the one on civil compensation.

Also, JSMP praises the Public Prosecution Service for issuing Circular No.02/PGR/2017 on Requests for Civil Compensation within the Scope of Criminal Investigations. This circular states that in crimes characterized as sexual violence and other serious crimes it is obligatory for the Public Prosecution Service to request civil compensation. This circular is an order that prosecutors have to adhere to, by including civil compensation in cases characterized as sexual violence.

JSMP considers this to be an important step forward in redressing the suffering of victims. Therefore, JSMP recommends for all prosecutors to use this circular as a guideline when drafting indictments so that requests for civil compensation can be consistent in cases characterized as sexual violence, gender based violence and other serious crimes.

²⁵ Article 284 of the CPC on deciding on a request for compensation orders the defendant to pay compensation where losses have been ascertained.

²⁶ Article 69 of the PC on suspension of a prison sentence on condition that certain duties be performed which asks the defendant to redress harm caused by the crime.

²⁷ https://jsmp.tl/wp-content/uploads/PrJSMPPhusuMPnoTribunalAplikaIndmizasaunSIVIL_TETUM.pdf

JSMP continues to recommend for the Public Prosecution Service and the courts to include civil compensation in recommended sentences and decisions for crimes characterized as sexual violence.

Based on JSMP observations at the courts, it was noted that in some cases of sexual violence the prosecution did not charge the defendant with the appropriate articles and only used the article on rape without including the article on aggravation. The following case provides an example:

2.3.3. Case study 1

The public prosecutor alleged that in the evening of 23 September 2018, the defendant told the victim to sleep with the defendant in his room, but the victim did not want to. Then on 25 September 2020, at 7am, when the victim was getting ready to go to school, the defendant called out to her and said “The two of us need to go to the plantation”, but the victim responded that she had to go to school. The defendant continued to pressure the victim, so the victim told the defendant to go to the plantation, and she would go later.²⁸

The defendant did not go to the plantation and told the victim to get the meat that was hanging in the defendant’s bedroom to make some food. The victim went into the defendant’s bedroom to get the meat but the defendant followed her from behind and forced the victim to have sexual intercourse. When the sexual intercourse was taking place, the victim lied to the defendant that someone was coming, so the defendant jumped up and ran outside. The victim took advantage of the situation and ran away, and told her parents about this incident. In this case the defendant was the grandfather of the victim.

The public prosecutor alleged that the defendant violated Article 172 of the Penal Code on rape that carries a maximum penalty of 5-15 years in prison.

In his final recommendations the prosecutor requested to amend the charges to include Article 173 of the Penal Code on aggravation but JSMP remains concerned because when the prosecutor was drafting the charges he did not carefully analyse this case and did not figure out that the defendant and the victim were related as grandfather and granddaughter. The prosecutor should have included Article 173 (a) of the Penal Code on aggravation in the charges because the defendant and the victim were related.

The court concluded this matter and sentenced the defendant to 6 years in prison.

Recommendations:

17. The courts should include civil compensation in their decisions in cases involving sexual violence to provide assistance to redress the suffering and

²⁸ https://jsmp.tl/wp-content/uploads/PrAvoHasoruBein-oanINSESTU_TETUM.pdf

harm suffered by victims and the serious psychological impact on victims. This also applies to the Public Prosecution Service, to also include the application of civil compensation in their final recommendations.

18. When prosecutors draft charges they should proceed with caution and they need to reflect the seriousness and the circumstances of the crime.

3. MINORS IN THE JUSTICE SYSTEM

Children are the future of the nation and their interests are paramount, however children continue to suffer a range of violence and live in danger even though Timor-Leste has its own legal framework as well as international laws that have been ratified by the State to provide protection to children against all forms of violence.

3.1.1. Cases involving minors

In 2020 JSMP monitored 68 cases involving child victims from a total of 733 cases monitored by JSMP. Based on JSMP observations, many children have suffered crimes such as simple offences against physical integrity characterized as DV, the sexual abuse of a minor, rape, exposure or abandonment and failure to provide food assistance.

Based on JSMP observations at the 4 district courts in 2020, there were many cases involving child victims and all jurisdictions on an almost daily basis tried cases involving child victims.

JSMP acknowledges that the Government of Timor-Leste has established some units and commissions to protect children, such as the Section to Protect and Assist Children who are At Risk and Victims of Abuse within the Ministry of Social Solidarity (MSS) (Child Protection Unit); Working Group on Child Protection and the Child Protection Referral Network; and the National Commission for the Rights of the Child (KNDL). Also, the Law Against Domestic Violence (LADV) includes a commitment from the Government to increase public knowledge about DV and increase assistance to victims.

Even though there is a system for the protection of children, it is not yet being implemented effectively. In particular, the Government does not yet have the capacity to conduct effective interventions in a timely manner to protect children from crimes of sexual violence characterized as incest.

Based on JSMP observations, the following list outlines JSMP's point of view regarding the challenges that exist in relation to child protection:

- Judicial actors don't really use coercive measures and protective measures that are provided for in the law to prevent future crimes and to protect victims and other vulnerable persons before and during trial proceedings;
- Investigations and trials take a long time and are always delayed. This results in a loss of evidence, increases the suffering of victims and reduces public confidence in the capacity of the formal justice system to administer justice;
- The courts tend to take a long time to process sexual crimes without consideration of the trauma suffered by the victims, which reduces public

confidence in the formal justice system and does not send a strong message to people not to commit crimes in the future;

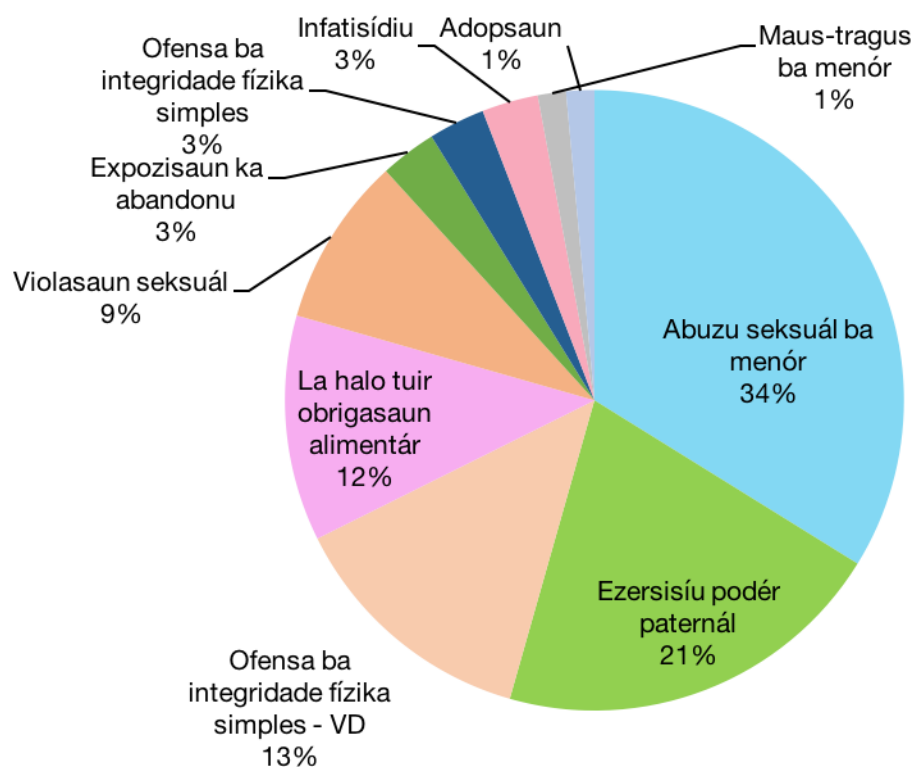
- The child protection system is in its initial phase, and does not have sufficient resources nor a legal basis that provides clear authority to the Government to carry out interventions in cases of child abuse;
- There is weak and inadequate coordination, case management and data collection between State agents and other partners and this means that there is no strong evidential basis for the State to develop legal and political responses to the issue of incest;
- There is a lack of public commitment to give priority to the issue of incest because there are no public education activities to increase knowledge about incest and the negative impact on the victim, the family and the community.

The table and graph below show that the crime of sexual abuse of a minor is the most common with 23 cases (34%). Next there are 14 civil cases regarding the exercise of parental authority, 10 cases involving simple offences against physical integrity characterized as DV, 8 cases of failure to provide food assistance and 6 cases of rape.

Table 14: Cases involving minor victims in the sexual abuse of a minor, sexual violence and other crimes (aged 0 – 16) monitored by JSMP in 2020

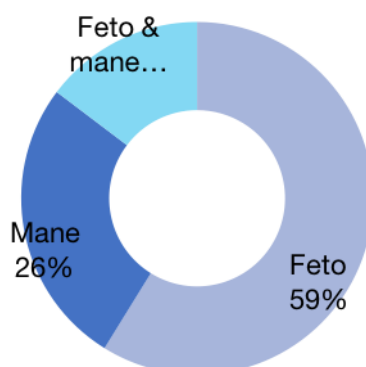
Case Type	Articles	Number
Sexual abuse of a minor	Article 177 of the PC	23
Exercise of parental authority	Articles 1757, 1758, 1759, 1762, 1765, 1786, 1787, 1782, 1804, 1805 of the Civil Code	14
Simple offences against physical integrity characterized as domestic violence	Article 145 of the PC & Article 35 of the LADV	9
Failure to provide food assistance	Article 225 of the PC	8
Rape	Article 172 of the PC	6
Exposure or abandonment	Article 143 of the PC	2
Simple offences against physical integrity	Article 145 of the PC	2
Infanticide	Article 142 of the PC	2
Mistreatment of a minor	Article 155 of the PC	1
Adoption	Article 1854 of the Civil Code	1
Total		68

Graph 13: Cases involving minor victims in the sexual abuse of a minor, sexual violence and other crimes (aged 0 – 16) monitored by JSMP in 2020



The graph below shows that most victims are girls (59%) in comparison with boys (26%). This means that girls continue to be at risk and vulnerable. They do not enjoy the right to live freely.

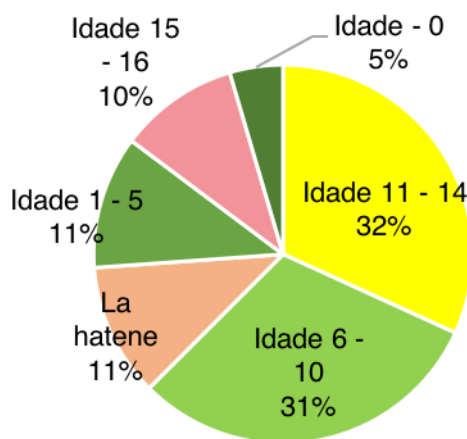
Graph 14: Cases involving child victims that were monitored by JSMP in 2020 based on the gender and age of the victim



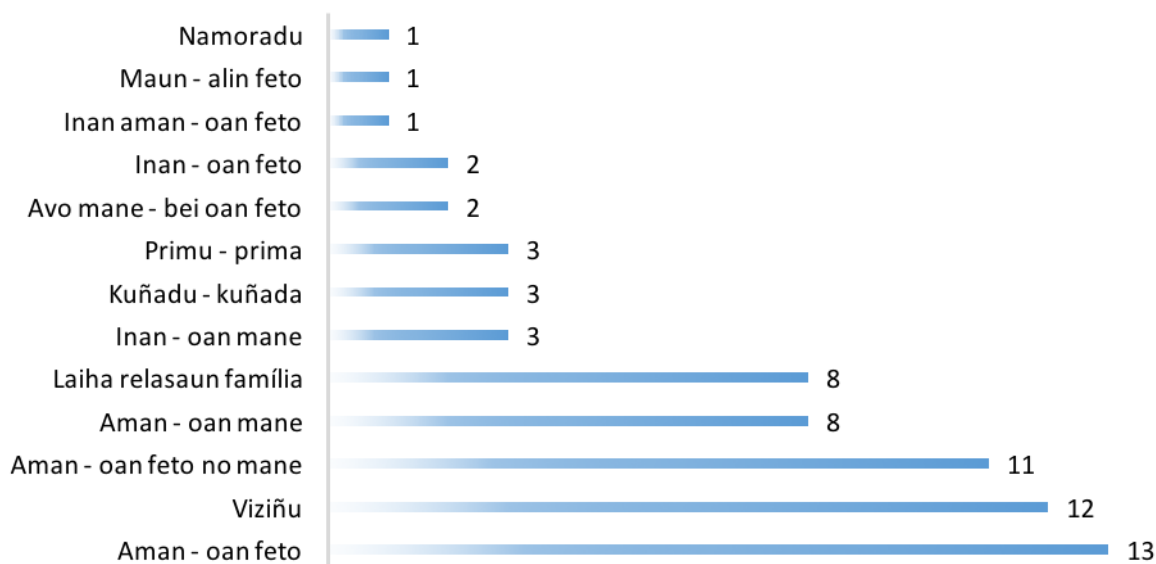
Article 18 (1) of the Constitution states that children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation.

Therefore, when crimes such as the abuse and rape of children continue to occur, it gives the impression that the State is not doing its best to comply with its constitutional responsibilities to ensure that children are given protection as provided for in the constitution.

The graph below shows that children aged 11 - 14 suffer the most violence, or 32%. Followed by children aged 6 -10 (31%), children aged 1-5 and age unknown (11%), children aged 15-16 (10%), and lastly children aged less than one (5%).



Graph 15: Criminal cases involving child victims monitored by JSMP in 2020 based on the relationship between the victim and the defendant



This graph shows that crimes involving child victims most often occur between relatives. From the crimes committed by fathers against daughters, there were 3 cases of the sexual abuse of a minor, 3 cases involving simple offences against physical integrity characterized as domestic violence, 4 cases of failure to provide

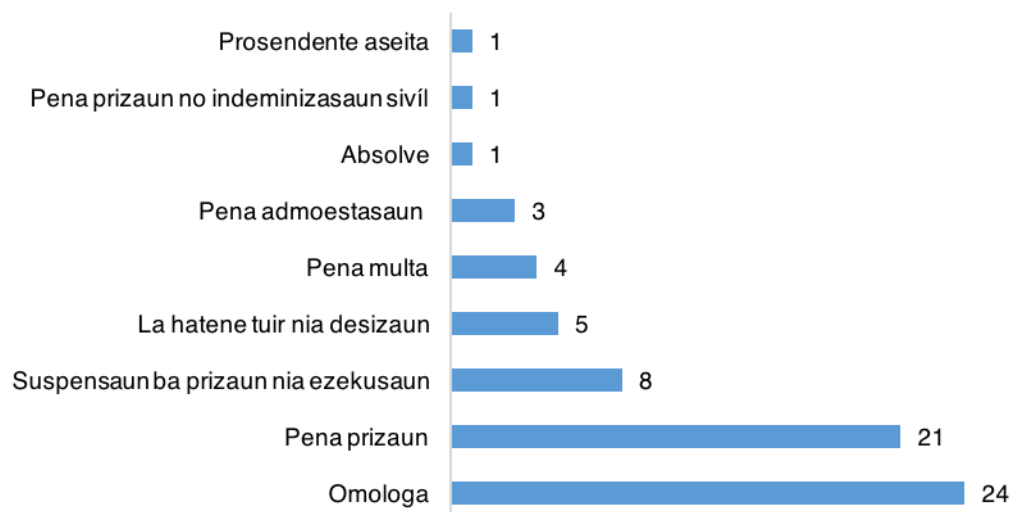
food assistance, and 3 cases involving the exercise of parental authority. From the crimes committed by fathers against their sons there was one case of mistreatment of a child, 3 cases involving simple offences against physical integrity characterized as domestic violence and 4 cases involving the exercise or parental authority. From the crimes committed by fathers against daughter and sons, there were 4 cases of failure to provide food assistance and 7 cases of exercise of parental authority. From the crimes committed by neighbours, there were 10 cases involving the sexual abuse of a minor and 2 cases involving sexual acts with an adolescent.

Children continued to be victims of crimes committed by family members, especially parents. Actually, parents are obliged to protect their children from any act of violence.

3.1.2. Trends in sentencing in cases involving child victims

In 2020 JSMP monitoring showed that from a total of 68 cases involving child victims, the courts most commonly validated settlements, namely in 24 cases. In 22 cases the perpetrators were sent to prison, and in 8 cases defendants received suspended prison sentences. From the 22 cases where defendants were sent to prison, in only one case did the courts order the defendant to pay civil compensation to the victim.

Graph 16: Trends in sentencing in criminal cases involving children that were monitored by JSMP in 2020



As emphasised in previous reports and above, ordering a defendant to pay civil compensation is a means of redressing a victim's suffering as the result of a defendant's behaviour that has had a serious psychological effect on the victim. Civil compensation is crucial to prevention, because it educates the defendant that not only will he have to go to prison, but there will be a significant cost.

JSMP believes that the justice sector has done its work to guarantee that the courts provide protection to children when sentencing perpetrators of crime. There are some cases that JSMP observed that show that sometimes the courts have imposed a sentence on perpetrators of crime that does not reflect the seriousness and circumstances of the crime committed against the victim, and in the following case study the court considered the extraordinary circumstances of the perpetrator, although JSMP believes that this should not have occurred.

3.1.3. Case study 1²⁹

The defendant was working and staying at the home of the victim's adoptive parents. On 18 May 2010 at approximately 7am, the victim aged 4 years and six months was playing in front of the house. When he saw this the defendant called out to the victim for her to help the defendant grab the puppies and put them with their mother so she could feed them. Because the victim was so young she did what the defendant told her to do and took the puppies to their mother.

The defendant told the victim to hold the dog's legs and the defendant held the puppy's head so it could drink some milk. At that time the witness JM, who is the victim's adopted father, was inside and was looking through the window and saw the defendant holding the dog in one hand and using his other hand to squeeze the victim's sexual organs. When he saw this, the witness punched the defendant four times on his body.

The public prosecutor charged the defendant with violating Article 177.2 of the PC on sexual abuse and for violating Article 182 (a) of the PC on aggravation because the victim was aged less than 12 when the perpetrator committed the act.

During the trial the defendant confessed to all of the facts in the indictment and stated that after this incident the defendant no longer lived with the victim and her family. The defendant also stated that he and his family tried to resolve this problem in accordance with East Timorese custom, but the victim's family did not want to.

The court did not require the statement of the victim and witnesses because the defendant confessed all of the facts in the indictment.

The public prosecutor requested for the court to use its discretion to convict the defendant. The public defender requested for the court to impose a lenient and fair penalty against the defendant, because the defendant was a first-time offender, and is 58 years old.

After evaluating all of the facts, the court found that the defendant was working for and living with the victim's family, and the defendant took advantage of the victim's young age to commit the act.

²⁹ https://jsmp.tl/wp-content/uploads/SumariuKazuTribunalDistritalDILI_TETUM-4.pdf

Based on this evidence and all of the circumstances, including the extraordinary mitigating circumstances due to the defendant's advanced age and after this incident the defendant no longer lived with the victim's family, the penalty was reduced by 1/5 and also 1/3 in relation to Article 182 on aggravation. Based on these considerations, the court sentenced the defendant to 3 years in prison, suspended for 3 years.

In this case the court imposed a penalty that was very inadequate considering the seriousness of this crime. In this case the victim was very vulnerable as she was aged just 4 years and six months, therefore automatically the actions of the defendant would have an effect on the psychological state of the victim. The court should not have considered the extraordinary circumstances of the defendant, considering that he committed the act against a very young child. In this case the court should have considered the aggravating circumstances such as the defendant had been living with the victim's parents for many years and performed domestic chores including looking after the victim.

3.1.4. Case study 2³⁰

The defendant JT and the defendant MR (wife and husband) committed the crime against their niece (the defendant is the victim's uncle). Because the parents of the victim have separated, and the victim's father is working in England, in September 2018 the victim went to live together with the two defendants.

On 4 September 2019, at approximately 7pm, the defendant MR took a coat hanger and struck the victim twice on her thigh until the coat hanger broke. The defendant MR took a hose and struck the victim four times on her back. On the same day the defendant JT slapped the victim on her left and right cheeks and caused her to suffer a bloody nose.

On 9 August 2019, at approximately 2.00pm, the defendant JT took a piece of plastic pipe and struck the victim seven times on her left arm, then the defendant pinched the victim's fingers on her right hand. The defendant used the plastic pipe to strike the victim four more times in the head and on her back.

The prosecutor alleged that the defendants violated Article 155.1 and 155.3 on the mistreatment of a child that carries a sentence of 2-6 years in prison and the limits to the penalties shall be increased by one third, as well as Articles 2, 3(c), 35(a) and 36 of the Law Against Domestic Violence.

During the trial the defendants partially confessed to the facts in the indictment. Meanwhile the victim confessed to all of the facts in the indictment. In the charges the prosecutor stated that the defendant was guilty of committing the crime of mistreatment of a child. The public defender requested for the court to amend the charge from mistreatment of a child to simple offences against physical integrity.

³⁰ https://jsmp.tl/wp-content/uploads/PrViolénsiahasoruMENOR_TETUM.pdf

In this case the court amended the charges from the crime of mistreatment of a child, as initially charged by the prosecutor, to the crime of simple offences against physical integrity with the reasoning that the actions of the defendants were not repetitive therefore the court considered that these actions did not fulfil the requirements of the crime of mistreatment of a minor.

JSMP considers Article 155 of the Penal Code on the mistreatment of a child to be more appropriate for violence committed against a child when the perpetrator is responsible for caring for the child, as a family member or under employment and it is not necessary for the acts to be repeated³¹.

Recommendations:

19. The Public Prosecution Service and the courts need to carefully assess each case based on the nature and the circumstances before formulating charges and issuing a decision, in order to ensure protection for children and to prevent other crimes against children.
20. Urges the courts not to consider extraordinary mitigating circumstances in cases characterized as sexual violence.
21. Urges prosecutors to use the specific article (155 of the Penal Code on mistreatment of a minor) when charging cases involving child victims.

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

Incest is a sexual act involving a child, parent, grandchild, grandparent, step-child, step-parent, adopted child, adopted parent or similar. Incest is a form of sexual abuse involving the exploitation of a position of familial authority that has serious consequences. Often, victims of incest are children who are abused by a person who they trust and is supposed to protect them.

In 2020 JSMP monitored 13 cases of incest. There were five cases committed by a father against a daughter, 1 case of a step-father and step-daughter, 1 cases of adopted father and adopted daughter, 1 case of a grandfather and a grandchild, 4 cases of a male cousin and a female cousin, and 4 cases of an uncle and a niece. Most of these cases involved rape and the sexual abuse of a minor.

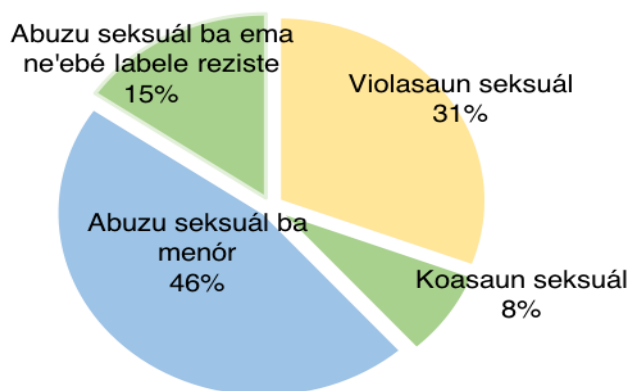
Table 15: Cases characterized as incest monitored by JSMP in 2020

Case type	Number	%
Sexual abuse of a minor	6	46%
Rape	4	31%

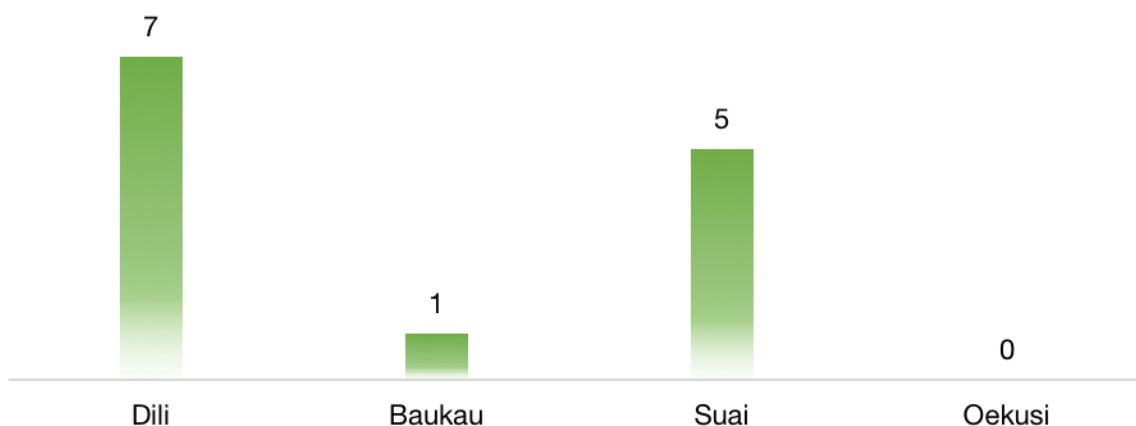
³¹ JSMP's thoughts in relation to cases involving child victims: https://jsmp.tl/wp-content/uploads/PR-preokupa-ho-MP-no-tribunál_TETUM.pdf

Sexual abuse of a person incapable of resistance	2	15%
Sexual coercion	1	8%
Total	13	100%

Graph 17: Cases characterized as incest monitored by JSMP in 2020



Graph 18: Total cases of incest tried by the courts in 2020



The Timor-Leste Penal Code (2009) does not specifically define incest. The Penal Code only provides protection to victims of incest who are less than 14 years of age in Article 177 of the Penal Code on the sexual abuse of a minor together with Article 182 on aggravation due to a family relationship. Victims of incest who are aged 14 and above are given protection in Articles 171 and 172 of the Penal Code on sexual coercion and rape together with Article 173 on aggravation based on a family relationship.

However, for victims aged 14 and above, they are given protection when there is proof that the defendant used violence or serious threats to have sexual intercourse. These are the severe limitations in the Timor-Leste Penal Code. Victims of incest are normally pressured by perpetrators, their family or their community not to testify against the perpetrator, or choose not to testify at the court to avoid the embarrassment and social stigma linked to this crime.

Also, sometimes the victim will say that they consented to have sexual intercourse with the perpetrator, but we need to question this consent because in cases of incest the perpetrator can use manipulation to avoid responsibility and to influence the victim.

In 2015 JSMP together with ALFeLa launched a submission entitled “Amending the Penal Code to Better Protect Women and Children”. In this submission JSMP and ALFeLa recommended the inclusion of a new article in the Penal Code relating to the crime of incest that does not consider the victim's age and the consent of the victim.³² Also in 2018 JSMP published a report entitled: Incest Report: Need to amend the Timor-Leste Penal Code³³. This Report provided updated information about progress achieved during the last six (6) months. This report explain how victims of incest can be better protected during each phase of court proceedings and how to deter potential perpetrators of incest.

Recommendations:

22. Incorporate a specific article on incest in the Timor-Leste Penal Code and to not consider the victim's consent or age.
23. Strengthen the provisions in the Penal Code that relate to sexual crimes in circumstances of dependency to discourage and punish defendants who commit sexual crimes and abuse their familial authority or exploit a relationship of dependency.

3.3. CASE OF CRIME OF INFANTICIDE

The crime of infanticide has occurred quite frequently in recent times and is increasing in the community. The crime of infanticide is a crime committed by a mother who kills her child/baby after giving birth or immediately after giving birth. Even though there are some applicable provisions in the Penal Code, they are not really adequate to stop the practice of infanticide and to prevent other potential crimes of infanticide. This is because the provisions in the penal law have a tendency

³² JSMP and ALFeLa Submission: <https://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLA-Penal-Code-Submission-FINAL-Tetum1.pdf>

³³ Incest Report: Need to amend the Timor-Leste Penal Code: <http://jsmp.tl/wp-content/uploads/Relatório-Insestu-Versaun-Ikus.pdf>

to only penalize the women who commit this crime without considering the extraordinary circumstances that relate to such cases.

In 2020 JSMP noted that there was a change or some progress in the indictment of the Public Prosecution Service in a case of infanticide, because the indictment did not only charge the defendant, but also charged the man who got the victim pregnant and exerted pressure by instigating the crime of infanticide in a case of infanticide that occurred on 22 January 2019 in Ermera Municipality. JSMP monitored this case through the Mobile Court in Ermera Municipality, on 21 September 2020.

JSMP believes that charges like this are an important step forward, because normally in cases of infanticide the Public Prosecution Service only charges the mother even if the circumstances show that a female defendant has suffered psychological pressure from her partner/man who impregnated her or from another person.

The charges show that court actors, and the Public Prosecution Service in particular, continue to show sensitivity when charging defendants in cases of infanticide. JSMP hopes that in the future they will continue to investigate and also charge the father of the child or other person who exerts pressure, makes threats, or uses force, which has been recommended by JSMP to date³⁴.

In addition to the aforementioned progress, in 2020 the National Parliament approved a resolution on preventative measures in cases of infanticide, abandoning a baby or child.

JSMP applauds the initiative and good will of the MPs in the National Parliament for approving draft resolution No. 59/V(3rd) on recommendations to the Government to adopt preventative measures in cases on infanticide. JSMP considers that the approval of this resolution will get the attention to all entities, including the Government, judicial institutions, parents, families and churches, so they can take preventative measures, that can reduce the rise in cases involving infanticide and the neglect of babies and children, through the measures recommended in this resolution.³⁵

JSMP also heartily applauds the Vice-President of the National Parliament, Ms. Maria Angelina Lopes Sarmiento, who used JSMP data in the plenary as a reference point for members of the national parliament to approve this resolution.

Recommendations:

24. The courts should investigate men who get women pregnant and instigate a crime pursuant to Article 31 of the Penal Code.

³⁴ https://jsmp.tl/wp-content/uploads/2012/06/JusticeUpdateKrimelInvantisidio_Tetum.pdf

³⁵ https://jsmp.tl/wp-content/uploads/PrPNAprovaRezolusaunbaAsuntuINFANTESIDIU_TETUM.pdf

25. The State needs to establish conditions for women who have unplanned pregnancies, because they are also victims of the irresponsible actions of men.
26. Urges relevant parties such as the Government, family and the church to comply with this resolution to prevent the crime of infanticide in the future.

3.4. CASES INVOLVING DISABLED PERSONS

In 2020 JSMP monitored 12 cases involving disabled persons. From these cases there was 6 cases of simple offences against physical integrity characterized as DV, 3 cases of sexual abuse of a person incapable of resistance, 1 case of serious offences against physical integrity and use of a bladed weapon, 1 case of negligent offences against physical integrity and 1 case of simple offences against physical integrity and 3 cases involving disabled defendants, namely simple offences against physical integrity characterized as DV.

Based on JSMP observations in 2020, the courts continued to face challenges in trials involving disabled persons, for example there were no sign language interpreters, which made it difficult for the courts to establish the facts.

As JSMP has highlighted many times, the courts need to have a sign language interpreter to help victims and witnesses who are deaf and mute. Also, during the trial if a defendant denies all of the allegations in the indictment the court can seek confirmation from the victim and witnesses.

In addition to the aforementioned circumstances, some of the courts are insensitive towards disabled persons by asking them questions in a loud voice, so the victims don't feel safe, and moreover the victims have difficulty speaking and hearing.

The following case study shows that that victim and the witness, who is the mother of the victim, have difficulty speaking and hearing, so the decision of the court was only based on the statement of the defendant made before the prosecutor during the first questioning.

3.4.1. Case study

The public prosecutor alleged that on an unspecified date in 2016, the defendant many times pulled the victim by the arm into the kitchen at the back of the main house. The defendant closed the kitchen door and had sexual intercourse with the victim until he ejaculated. After committing this act against the victim, who was his own daughter, the defendant went and slept with his wife.

Then on an unspecified day at 11pm the defendant entered the kitchen, closed the door and has sexual intercourse again with the victim until he ejaculated, then the defendant went to sleep with his wife.

The defendant and his mistress (the victim's step-mother) as well as the victim's two older brothers and one younger sister slept in the main house, and only the victim slept in the kitchen, therefore the defendant took advantage of this situation and had sexual intercourse with the victim and when the defendant went to have sexual intercourse with the victim for the third time his mistress caught him and used a small piece of wood to strike the defendant and the victim and the victim ran away to the coffee plantation.

The prosecutor alleged that the defendant violated article 179 KP on the sexual abuse of a person incapable of resistance in conjunction with Articles 2, 3 (a), 35 (b) and 36 of the Law Against Domestic Violence.

During the trial, the defendant denied all of the facts in the indictment and stated that the victim made a signal to provoke him and grabbed his genitals, but there was no reaction from the defendant, because the defendant is quite old. The defendant also stated that the defendant was asleep and the victim pulled down his pants and grabbed his genitals three times (in the day and at night) and the defendant's mistress also saw the victim grab the defendant's genitals.

The victim made statements but they were unclear because the victim can't speak or hear clearly. Therefore the court appointed a translator for the victim but the translator's language was Mambae, therefore the victim continued to have difficulties in providing a statement.

The prosecutor requested for the court to impose a fair penalty against the defendant. The defence requested for the court to acquit the defendant, because none of the facts were proven.

The court found that all of the allegations in the indictment were proven, even though the defendant denied them, however the defendant made his statement before the prosecution during the investigation and said that the defendant had sexual intercourse with the victim. The victim was pregnant and gave birth, and the court gave more weight to the statement made by the defendant before the prosecution because the defendant's memory was still fresh and he had not thought of another version, however when appearing before the court after a long time submitted another version.

Based on the facts that were proven, the court concluded this matter and sentenced the defendant to five years and four months in prison.

JSMP is very concerned with the trial of cases like this case study, because based on JSMP observations in cases like this it is very difficult for victims to properly state the facts, due to the difficulties that exist.

Also, JSMP believes that the penalty imposed by the courts against the defendant was not proportional to the seriousness of the crime, because these acts were

committed on three occasions and the victim was the daughter of the defendant who is disabled and the court's decision was only based on the statement of the defendant that was made before the prosecution. Therefore when the defendant denied all of the facts regarding the statement made before the prosecution, no facts were produced to convict the defendant. Given the aforementioned circumstances, JSMP believes that the courts need to create the necessary conditions and make a sign language interpreter available, and they need to be sensitive to cases like this in the future.

Table 16: Cases involving disabled persons that were monitored by JSMP in 2020

Case Type	Articles	Number
Simple offences against physical integrity – DV	Article 145 of the PC & Article 35 of the LADV	6
Sexual abuse of a person incapable of resistance	Article 179 of the PC	3
Serious offences against physical integrity and use of bladed weapon	Article 146 of the PC & Article 2.1 b and Article 20.1 of Law No. 5/2017	1
Negligent offences against physical integrity	Article 148 of the PC	1
Simple offences against physical integrity	Article 145 of the PC	1
Totál		12

Graph 19: Cases involving disabled victims and case type

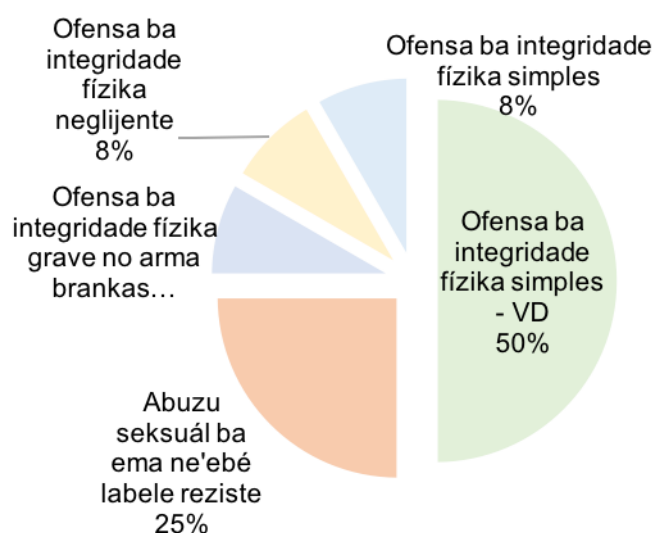
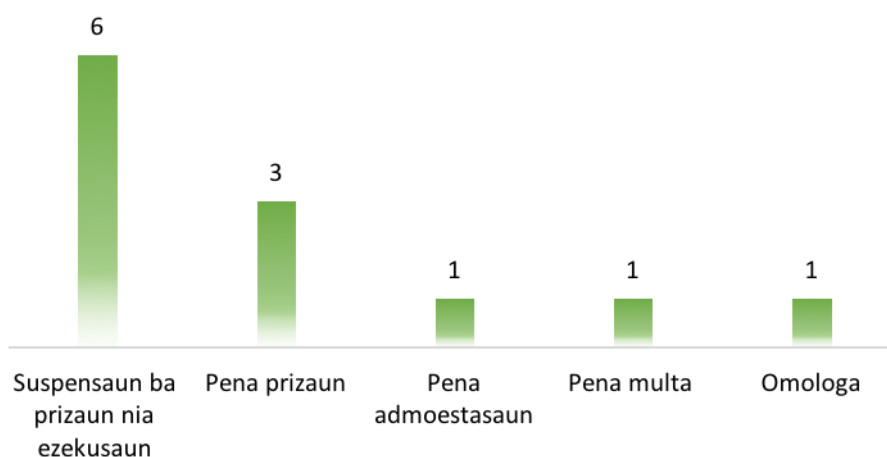


Table 17: Decisions in cases involving disabled victims based on the penalties imposed by the courts

Case Type	Articles	Number
Suspended prison sentence	Article 68 of the PC	6
Prison	Article 66 of the PC	3
Admonishment	Article 82 of the PC	1
Fine	Article 67 of the PC	1
Validation of settlement	Article 216 of the CPC	1
Total		12

Graph 20: Decisions in cases involving disabled victims based on the penalties imposed by the courts



Recommendations:

- 27. JSMP urges the courts to recruit a sign language interpreter, to help victims and witnesses who have difficulties speaking and hearing.
- 28. Urges judicial actors to be sensitive when trying cases involving disabled victims.

4. CIVIL CASES

The legal provisions on civil marriages in Article 1475 of the Civil Code discriminate against religions other than the Catholic religion. Therefore JSMP is concerned with the provisions and believe that they violate the right of each person to have freedom to choose and follow his/her religion, because these rights are guaranteed in Article 12 of the Timor-Leste Constitution that deals with the State and religious denominations.

- 3.3. Article 1475 (Civil, catholic, and bride-price based monogamic marriage)
1. Marriage is either civil, catholic, or bride-price based monogamic
 2. Civil law recognises value and efficacy of marriage in catholic matrimony and in bride-price based monogamic marriage, pursuant to the following provisions.

In relation to this issue, previously JSMP held interviews with religious leaders from the Muslim and Protestant faiths to hear their thoughts in relation to JSMP's concerns about the Civil Code. During these interviews and meetings the aforementioned parties also acknowledged that because of these provisions, the state (Ministry of Justice) does not consider religious documents to be official documents when applying for a Timor-Leste marriage certificate through the notary services.

However, on 25 November 2020, the Ministry of Justice presented a Draft Civil Registry Code in a meeting of the Council of Ministers as a legislative policy option to allow the registering of all types of marriage recognized in the law, therefore there are legal assumptions that have a civil effect, and also to provide justice to citizens, by providing a legal framework using computerised support to fill in the other gaps relating to civil registration.

Recommendations:

29. Urges the Government and the National Parliament to amend the Civil Code to include and recognise other religions.
30. Urges the Council of Ministers to accelerate discussion on the Draft Civil Registry Code to respond to the needs of other non-Catholic religions.
31. If it is not possible to approve the Draft Civil Registry Code, the Government through the Ministry of Justice, needs to issue an instruction to notary services to assist the followers of other religions to obtain official documents from the Government.

5. CASES INVOLVING STATE AUTHORITIES

5.1. RE-TRIAL OF THE DEFENDANT GASTÃO SOUSA CS

5.1.1. Judicial Facts

The defendant Gastão Sousa was the Minister of Public Works whilst the defendant Diego da Costa was the Office Chief at the Ministry of Public Works (POM), the defendant Martinho Gusmão is a priest at the Manatuto Diocese and the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa are the children of the defendant Gastão de Sousa.

The public prosecutor alleged that in 2012 the two defendants Gastão Sousa and Diego da Costa used their power to use two State vehicles from eight vehicles given by the Asia Development Bank (ADB). However, the defendant Gastão Sousa gave a verbal instruction to the defendant Diego da Costa without the knowledge of the Logistics Department of the POM and therefore the vehicle bearing number plate 18-948 was kept at the home of the defendant Gastão de Sousa in Bekusi kraik Sub-Village, Bekora Village. The defendant Gastão de Sousa also allowed his two sons, the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa, to use this car for private purposes and they forged his signature to fill up fuel from Tiger Fuel and used the vehicle to drive around Dili.

The defendant Gastão de Sousa also allowed the defendant Diogo da Costa to twice perform maintenance on the car with the number plate 18-948 using ADB money. The defendant Gastão de Sousa also personally handed over the car with the number plate 19-754 TLS that was used for private purposes by the defendant Diogo da Costa and the defendant Martinho Gusmão used this vehicle for 1 year and 3 months and this vehicle was maintained using funds from ADB totalling US\$532.34.

The indictment stated that these goods and equipment belonged to the State, however the defendants took advantage of public property for personal gain even though they knew that their acts would disadvantage the State.

Charges of the Prosecutor

The public prosecutor alleged that on 28 February 2010, the Timor-Leste Government signed an agreement with the Asia Development Bank (ADB) to carry out a funding project with a total budget of US\$ 46,000,000. This project allocated funding for the rehabilitation and construction of roads in Liquiça and Batugadé. The project ended in 2012 and the unused money totalling US\$ 82,776.77 needed to be returned, together with eight vehicles. The Ministry of Public Works received two vehicles, a Toyota Land Cruiser with the number plate 18-948 TLS, and Toyota Kijang Innova with the number plate 19-754 TLS which were given to the defendant Diogo da Costa as the Office Chief of the Ministry of Public Works. In reality only information was provided about two other vehicles, namely a Toyota Rav4 with the number plate 18-723 TLS, and a Toyota Land Cruiser Prado with the number plate 18-947TLS. After receiving these vehicles, based on a verbal instruction given by the defendant Gastão de Sousa, the defendant Diogo da Costa, without the knowledge

of the Department of Logistics at the Ministry of Public Works, intended to remove the registration of these two vehicles, which were assets belonging to the State.

On 24 September 2012 the defendant Gastão de Sousa communicated with the ADB about his decision to allocate two vehicles with the number plates 18-948 and 19-754 to the Management Project Unit, including maintenance and fuel supplies financed by ADB, but in reality the vehicle with the number plate 18-948 was kept at the home of the defendant Gastão de Sousa in Bekusi karaiik Sub-Village, Bekora Village. The defendant Gastão de Sousa also allowed his two sons, the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa, to use this car for private purposes and they forged his signature to fill up fuel from Tiger Fuel and used the vehicle to drive around Dili. The defendant Gastão de Sousa also allowed the defendant Diogo da Costa to twice perform maintenance on the car with the number plate 18-948 using ADB money.

On an unspecified date in May 2014 the defendant Martinho Gusmão made a verbal request for the defendant Gastão de Sousa to request a vehicle to make preparations for a ceremony commemorating 200 years of the Manatuto Diocese on the 13th May 2014. The defendant Gastão de Sousa personally handed over the car with the number plate 19-754 TLS that was used for private purposes by the defendant Diogo da Costa. The defendant Martinho Gusmão used this vehicle for 1 year and 3 months and when he used the vehicle the defendant Martinho Gusmão twice requested for the defendant Gastão de Sousa to perform maintenance on this vehicle using funds from ADB totalling US\$ 532.34. The indictment stated that these goods and equipment belonged to the State, however the defendants took advantage of public property for personal gain even though they knew that their acts would disadvantage the State.

The public prosecutor alleged that the defendant Gastão de Sousa violated Article 295 of the Penal Code on embezzlement that carries a sentence of 3-10 years in prison and as co-perpetrator of Article 274 of the Penal Code on intentional mismanagement. The defendant Diogo da Costa was charged by the prosecutor for violating Article 295 of the Penal Code on embezzlement and the crime of misappropriation of public assets (Article 296) and Article 303 (a) of the Penal Code on forgery of documents or technical report. The defendant Martinho Gusmão was charged by the prosecutor for being complicit in the crime of intentional mismanagement (Article 274 of the PC). The defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa were charged by the prosecutor as co-perpetrators of the crime of embezzlement (Article 295).

Proceedings in Court

During the trial, the defendant Gastão de Sousa stated that he received two vehicles: a Toyota Land Cruiser with the number plate 19-754 TLS and a Toyota Kijang Innova. The Toyota Innova was given to the defendant Diego da Costa. Meanwhile

regarding the Toyota Land Cruiser Prado vehicle with the number plate 18-948, the defendant acknowledged that he told his two sons (the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa) to fill up fuel from Tiger Fuel, they immediately gave this car back because the defendants also have their own car so they never used this car to drive around Dili.

The defendant Gastão de Sousa added that he received a phone call from the Prime Minister, Xanana Gusmão to handover the vehicle with number plate 19-754 TLS to Father Martinho Gusmão be used to make preparations for 200 years of the Manatuto Diocese. Therefore according to the defendant, the vehicle used by the defendant Martinho Gusmão belonged to the State and the maintenance also used government money through the ADB funds. The defendant also stated that before the charges were laid the two cars had been given back to the State.

The defendant Diego da Costa as the Office Chief at the Ministry of Public Works stated that he signed documents from ADB that donated four cars to the POM. However the defendant did not know when the cars were handed over. The defendant acknowledged that he received a Toyota Kijang Inova car with number plate 19-754 TLS that the Minister of Public Works gave to him. The defendant also stated that he did not use the car for a long time, the Minister told him to give it to Father Martinho Gusmão to use for preparations to commemorate 200 years of the Manututo Diocese. After handing over this car, the defendant Diego used a private car to carry out the work of the office, however he used State fuel through the ADB project.

Also, the defendant Martinho Gusmão stated that he asked for assistance from the PM Xanana Gusmão to provide a car to help with preparations to commemorate 200 years of the Manututo Diocese and he obtained the aforementioned Kijang Inova car. The defendant also stated that he fixed the car using State money because he considered it to be a State car. Meanwhile the defendant Jordão Maria de Jesus Sousa and the defendant Ferlio Afonso Badoloi da Silva Sousa chose to remain silent.

The witness Xanana Gusmão as the Prime Minister at that time testified that he did not know about an agreement between the Timor-Leste Government and the Asia Development Bank (ADB). Regarding the aforementioned car, the witness testified that he rang the defendant Gastão de Sousa as the Minister of Public Works to hand over the car to the defendant Martinho Gusmão to be used for preparations to commemorate 200 years of the Manatuto Diocese. The witness considered that the car used by the defendant Martinho Gusmão was a State car and therefore the maintenance of this car should use State money.

The witness Armando Martins as the Head of Logistics at the POM testified that he handed over the Toyota Kijang Inova car with the number plate 19-754 TLS to the defendant Diego da Costa. Meanwhile the witness did not know about the

substitution of the number plate to a private one. Meanwhile the witness Felimino Soares, the driver for Minister Gastão de Sousa, testified that he did not sign the voucher and had no knowledge about the forgery of this signature.

Final recommendations

The prosecutor stated that the facts set out in the indictment were all proven, even though the defendants partially confessed. Therefore, the prosecutor requested for the court to convict the defendant Gastão de Sousa for the crime of embezzlement with a prison sentence of 2 years and six months, and for the crime of intentional mismanagement to convict the defendant with a prison sentence of 1 year, with a single sentence of 2 years and six months in prison suspended for 3 years.

Meanwhile for Diego da Costa, the prosecutor requested for the court to convict the defendant with a prison sentence of 2 years suspended for six months and to convict the defendant with a prison sentence of 2 years suspended for 2 year and six months for the crime of forgery of documents or technical report.

Meanwhile the prosecutor requested for the defendant Martinho Gusmão to be given a prison sentence of 1 year suspended for 1 year and six months for being complicit in the crime of intentional mismanagement and for the court to use its discretion to convict the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa.

The public defender for the defendants requested for the court to acquit the defendants Gastão de Sousa, Martinho Gusmão, Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa from the charge of embezzlement and the public defender also requested for the court to acquit the defendant Martinho Gusmão for being complicit in the crime of intentional mismanagement.

Decision from the Court of First Instance³⁶

After evaluating all of the facts, the court amended the charge to add another charge against the defendant Gastão de Sousa as the co-perpetrator of misappropriation of public assets (Article 296) with the consideration that the defendant Gastão Sousa had knowledge about the actions of the defendant Diego da Costa who used State fuel for his private car. Based on the facts that were proven, the court convicted the defendant Gastão de Sousa for the crime of embezzlement with a prison sentence of 2 years and six months, and for the crime of misappropriation of public assets he was given a prison sentence of 1 month. The court accumulated these two penalties into a single penalty of 2 years and six months in prison, suspended for 2 years and six months.

The court also ordered the defendant Gastao Sousa to pay civil compensation to the State of US\$532.34, to pay for the maintenance of the vehicle of the defendant Martinho Gusmão using ADB funds, and ordered the defendant Gastão Sousa to pay

³⁶ https://jsmp.tl/wp-content/uploads/SumariuKazuTribunalDistritalDILI_TETUM.pdf

civil compensation to the State of US\$1,733.92 for fuel expenses accumulated by the defendants Ferlio Sousa and Jordão Sousa between 2013 and January 2015 using funds from the ADB. The court also ordered the defendant to pay court costs of US\$200.00. Meanwhile the court decided to acquit the defendant from the charge of intentional mismanagement (co-perpetrator).

Also, the court convicted the defendant Diego da Costa. The court found him guilty of the crime of embezzlement and misappropriation of public assets because the defendant used a State car for personal use and conducted maintenance and used State fuel for a private car. The court decided to acquit the defendant Martinho Gusmão for being complicit in the crime of intentional mismanagement and Ferlio Sousa and Jordão Sousa for the crime of embezzlement.

After the ruling was announced the Public Prosecution Service said it did not agree with the decision of the court to acquit the defendant Gastão Sousa as the co-perpetrator of the crime of intentional mismanagement because the defendant gave permission to use the car and State fuel (ADB) for personal use including the maintenance of these cars.

The prosecution also did not agree with the court's decision to acquit the defendant Diego da Costa from the crime of forgery of documents or technical report because the defendant confessed that he invented a signature on the fuel voucher for a private car and the prosecutor did not agree with the court's decision to acquit the defendant Martinho Gusmão for being complicit in the crime of intentional mismanagement because the defendant used a State car for private use for 1 year and 3 months including expenditure for maintenance.

The public defender for the defendant Gastão de Sousa did not agree with the amended charges because the defendant Gastão de Sousa assumed his position as the Minister in accordance with Decree-Law No. 7/2007 which allowed the minister to use a State car for personal use.

Decision of the Court of First Instance responding to a request from the Court of Appeal regarding the Defendants Gastão Sousa and Diego da Costa³⁷

On 13 July 2020 the Dili District Court held a re-trial for the crimes of embezzlement, misappropriation of public assets, intentional mismanagement and forgery of documents or technical report involving the defendants Gastão de Sousa, Diego da Costa, Martinho Gusmão, Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa (sons of the defendant Gastão de Sousa).

The Dili District Court conducted a re-trial based on the decision from the Court of Appeal which requested for the Dili District Court to reconsider the ruling of the Court of First Instance in relation to a request from the public defender of the defendant

³⁷ https://jsmp.tl/wp-content/uploads/SumariukazuTribunalDistritalDILI_TETUM.pdf

Gastão de Sousa and the defendant Diego da Costa. The defence lodged an appeal in October 2018, because they did not agree with the decision of the Court of First Instance against these two defendants in relation to the crime of misappropriation of public assets. The reasoning of the defence was that the defendants were not categorised as “officials” because they held a political post that was based on a political appointment. The concept of an officer was based on the recruitment process. On these grounds the defence requested for the court of appeal to acquit the two defendants.

In their final recommendations the prosecution and defence had no objection. During the re-trial the court considered all of the facts and maintained the decision of the court of first instance pursuant to Article 302 (d) of the Penal Code on the concept of officials that states that a person who accepts the function of public utility even provisionally or temporarily with remuneration is considered an official. The defendants performed functions after being entrusted and receiving remuneration, therefore the defendants were officials pursuant to Article 302 of the Penal Code.

Previously the Court of First Instance convicted the defendant Gastão de Sousa for the crime of embezzlement with a prison sentence of 2 years and six months, and for the crime of misappropriation of public assets he was given a prison sentence of 1 month. The court accumulated these two penalties into a single penalty of 2 years and six months in prison, suspended for 2 years and six months. For the crime of intentional mismanagement (co-perpetrator) the court acquitted the defendant from this charge. The Court of First Instance convicted the defendant Diego da Costa for the crime of embezzlement with a prison sentence of 1 year, and for the crime of misappropriation of public assets he was given a prison sentence of 6 months. The court accumulated these two penalties into a single penalty of 1 year and six months in prison, suspended for 1 year and six months.

5.1.2. Observations and comments

The case involving Gastão Sousa and the other defendants has been widely debated since the initial trial in 2018. At that time the defendants Gastao Sousa and Diego da Costa did not accept the charges of the Public Prosecution Service for the crime of embezzlement pursuant to Article 295 of the PC because according to their defence pursuant to Article 302 (d) of the PC the defendants did not fall into the category of “officials” because the defendants assumed their positions as the result of political appointments. The concept of an officer was based on the recruitment process. The public defender for the defendant Gastão de Sousa also stated that the defendant Gastão de Sousa assumed his position as the Minister in accordance with Decree-Law No. 7/2007 which allows the minister to use a State car and to use a private car offered by the State. Therefore the defence believed it was not appropriate to charge the two defendants with the crime of embezzlement.

Therefore, based on these considerations, before the trial commenced, the defence of the two defendants presented a request to remove the charge of embezzlement

against these two defendants, however the Court of First Instance opposed the request of the defence and decided to continue with the trial until a decision was reached in the first instance.

5.1.3. JSMP does not agree with the acquittal of the defendants from some of the charges

JSMP does not agree with the court's decision to acquit the defendant Gastão Sousa as the co-perpetrator of the crime of intentional mismanagement as set out in Article 274 of the PC because the defendant himself stated that he gave the aforementioned car to his two sons to fill up petrol, even though his two sons chose the right to remain silent and there was no witness to reinforce the defendant's statement or to reject the allegation of the Public Prosecution Service that the defendants took the aforementioned car for private use.

“Article 274 (3) of the Penal Code

The same penalties are applicable to any person who misappropriates, or allows misappropriation of property that were only to be disposed of within the scope and for the specific purposes of managing property of a third party”.

Also, JSMP does not agree with the court's decision to acquit the defendant Martinho Gusmão for being complicit in the crime of intentional mismanagement because the defendant was found guilty of using a State car for personal use for 1 year and 3 months including using State money for maintenance.

“Article 274 (2) of the PC

If the assets, interests or services referred to in the preceding subarticle are owned by the State, a public utility company, cooperative or people's association, the perpetrator is subject to an applicable penalty of 2 to 6 years imprisonment”.

JSMP believes that these two articles clearly show that the defendant used State assets for private use as the result of the decision of the defendant Gastão Sousa as the Minister of Public Works which was against the law. Therefore JSMP does not agree with the court's rationale for acquitting the defendant Martinho Gusmão only because he was carrying out activities for the diocese. This goes against the principle of the State Budget law including the Law on Financial Management that does not authorize other expenditure in addition to that set out in the State Budget each year.

JSMP also does not agree with the court's decision to convict the defendants Ferlio Sousa and Jordão Sousa as co-perpetrators of the crime of embezzlement. JSMP believes that the court should have convicted the two defendants for the crime of intentional mismanagement because it was proven that the two defendants gained an advantage from the decision made by their father the defendant Gastão Sousa to allow them to use a State car as well as filling it with petrol that belonged to the State.

The court's decision to acquit these two defendants also goes against the court's decision to order the defendant Gastão Sousa pay civil compensation to the State of US\$1,733.92 for the cost of fuel used by the defendants Ferlio Sousa and Jordão Sousa from 2013 until January 2015. JSMP believes that when the defendant Gastão Sousa was ordered to pay for this cost it means that the acts committed by the defendants Ferlio Sousa and Jordão Sousa were illegal.

5.1.4. JSMP's position on Article 302 on the concept of official

JSMP praises the decision of the Court of First Instance to conduct a re-trial and to convict the defendants Gastão Sousa and Diego da Costa for the crime of misappropriation of public assets because JSMP agrees with the consideration of the court regarding Article 302 (d) of the Penal Code on the concept of official:

1. For the purposes of the criminal law, an official shall be considered as any of the following:

a) Civil servant;

b) Administrative officer;

c) Member of the armed and law enforcement forces;

d) Any person who, even provisionally or temporarily, with or without remuneration, voluntarily or compulsorily has been called to perform or to participate in performance of an activity within civil administrative or court service or, under similar circumstances, performs duties or participates in any agency of public utility.

2. For effects of criminal law, the provisions in this title apply to anyone performing political, government or legislative duties.

JSMP acknowledges that based on the facts the defendants' actions fulfil the provisions of Article 302 (1.d) which are reinforced in Article 302.2, that even though the defendants were politically appointed they are still categorised as persons who have been provisionally or temporarily called to perform activities within the function of public administration.

5.1.5. This trial took a very long time

JSMP also notes that, the trial of this case took a very long time. This case occurred in 2012 and the Public Prosecution Service started inquiries in 2015 and the trial only started in 2018 and the decision in the first instance was made in 2018 and the decision for re-trial was made in July 2020. The final conclusion is that this case took four years to obtain a decision from the Court of First Instance and it took 2 years to have the Court of Appeal send the matter back the Court of First Instance for a re-trial.

6. CONCLUSION

Just like previous reports, this overview of the justice sector aims to provide useful, updated and credible information to the public based on JSMP's independent monitoring relating to progress achieved and challenges faced by the sector justice in 2020.

The Timor-Leste justice sector continued to show important progress, even though at the same time the justice sector also continued to face challenges which impacted on the administration of the justice sector in general, such as the political impasse and the use of the duodecimal budget during 2020. Also, the State of Emergency relating to COVID-19 (Corona Virus Disease)³⁸, had a major impact on the normal functioning of the courts for two months. The courts were only reactivated or the work of the courts was normalized at the start of June, however efforts were made to ensure compliance with COVID-19 prevention mechanisms.

Also JSMP believes that the Court of Appeal and the Ministry of Justice in 2020 allocated less money in comparison with 2019 for the mobile courts program and the spaces used for mobile trials were inappropriate. Also the court still didn't have translators for dialects during trials.

JSMP was still unable to access trials at the Court of Appeal, because the Court of Appeal did not carry out trials that were open to the public and continued to just hold deliberations. Therefore, during the entirety of 2020 no appeal cases were monitored by JSMP at the Court of Appeal even though data from the Court of Appeal indicates that this court finalised a large number of cases, as mentioned previously. JSMP also observed another challenge relating to human resources (judges) as there were only four judges at this court.

JSMP also observed that courts continued to try cases involving gender based violence and the courts most often applied suspended prison sentences without rules of conduct, the charges were not appropriate in certain cases, as well as the inconsistent application of civil compensation. Therefore JSMP recommends for the courts to apply rules of conduct in many cases to have a deterrent effect on defendants and there should be guidelines on drafting charges and sentencing.

³⁸ On 27 March 2020, the President of the Republic via Presidential Decree No. 29/2020, decreed the first State of Emergency from 28 March 2020 until 26 April 2020.

ANNEX A – STATISTICS

Table A: Criminal cases monitored by JSMP in 2020

Case type	Articles	Number
Simple offences against physical integrity - DV	Article 145 KP & Article 35 of the LADV	368
Smuggling	Article 316 of the PC	42
Simple offences against physical integrity	Article 145 of the PC	36
Mistreatment of a spouse	Article 154 of the PC	34
Reciprocal offences against physical integrity	Article 151 of the PC	13
Rape	Article 172 of the PC	11
Aggravated property damage	Article 259 of the PC	8
Failure to provide food support	Article 225 of the PC	7
Serious offences against physical integrity	Article 146 of the PC	7
Aggravated sexual abuse of a minor	Articles 177(1) & 182 of the PC	6
Bladed weapons	Article 2.1 (f) and Article 20.2 of Law No. 5/2017	6
Sexual abuse of a minor	Article 177(1) of the PC	6
Simple offences against physical integrity – DV and threats	Article 145 of the PC & Article 35 of the LADV & Article 157 of the PC	5
Driving without a license	Article 207 of the PC	4
Simple offences against physical integrity and property damage	Articles 145 & 258 of the PC	4
Sexual acts with an adolescent	Article 178 of the PC	4
Property damage	Article 258 of the PC	4
Manslaughter	Article 140 of the PC	4
Threats	Article 157 of the PC	4
Misappropriation of public assets - corruption	Article 296 of the PC	3
Simple offences against physical integrity – DV and use of a bladed weapon	Article 145 of the PC & Article 35 of the LADV & Articles 2.1 (f) and 20 of Law No. 5/2017	3
Sexual coercion	Article 171 of the PC	3
Threats and using a bladed weapon	Article 157 of the PC and Articles 20 (1), 2 (2 f) of Law No. 5/2017	3
Aggravated homicide - DV	Article 139 of the PC & Article 35 of the LADV	3

Forgery of documents or technical report and aggravated forgery	Articles 303 & 304 of the PC	3
Serious offences against physical integrity and use of a bladed weapon	Article 146 & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	3
Obstructing public authority	Article 243 of the PC	3
Negligent offences against physical integrity	Article 148 of the PC	3
Abandonment or exposure	Article 143 of the PC	2
Public disclosure of private information	Article 183 of the PC	2
Robbery	Article 253 of the PC	2
Aggravated larceny	Article 252 KP	2
Trafficking and other related illegal activities, aggravating circumstances, and the illegal trafficking and use of drugs	Articles 7 (1), 9 (m) of Law No. 2/2017	2
Aggravated rape	Articles 172 & 173 of the PC	2
Aggravated rape – Incest	Articles 172 & 173 of the PC	2
Attempted homicide	Articles 23 & 138 of the PC	2
Aggravated homicide	Article 139 of the PC	2
<i>Rama ambon</i> (device for firing darts) and use of a bladed weapon	Articles 19 (1), 20 (1), and 2 (2) of Law No. 5/2017	2
Simple offences against physical integrity, serious offences against physical integrity, property damage, and use of a bladed weapon	Articles 145, 146, 258 of the PC, Article 2 No.1 (f) and Article 20.2 of Law No. 5/2017	2
Simple offences against physical integrity and threats	Articles 145, 157 of the PC	2
Defamatory false information	Article 258 of the PC	2
Larceny	Article 251 of the PC	2
Property damage with violence	Article 260 of the PC	2
Crime of attempt, punishability of attempt and rape - Incest	Articles 23 & 24 & 172 of the PC	1
Sexual abuse of a person incapable of resistance	Article 179 of the PC	1
Rape - Incest	Article 172 of the PC	1
Aggravated rape	Articles 172 & 173 of the PC	1
Sexual abuse of a person incapable of resistance – Incest DV	Article 179 of the PC & Article 35 of the LADV	1
Sexual abuse of a person incapable of resistance - Incest	Article 179 of the PC	1

Attempted sexual abuse of a minor and punishability of attempt	Articles 23 & 24 & 177(2) of the PC	1
Aggravated sexual abuse of a minor	Articles 177(2) & 182 of the PC	1
Aggravated sexual coercion – Incest	Articles 171 & 173 of the PC	1
Aggravated sexual abuse of a minor- Incest	Articles 177(2) & 182 of the PC	1
Aggravated sexual abuse against a minor – Incest DV	Articles 177(1) & 182 of the PC & Article 35 of the LADV	1
Sexual abuse of a minor	Article 177(2) of the PC	1
Aggravated sexual abuse of a minor- Incest	Articles 177(1) & 182 of the PC	1
Attempted rape	Articles 23 & 172 of the PC	1
Attempted sexual abuse of a minor – Incest DV	Articles 23 & 177(2) of the PC & Article 35 of the LADV	1
Child prostitution	Article 175 of the PC	1
Crime of attempt, punishability of attempt and rape	Articles 23 & 24 & 172 of the PC	1
Sexual abuse of a minor and continuous crime	Articles 177(1) & 41 (1) of the PC	1
Aggravated sexual abuse against a minor – Incest DV	Articles 177(1) & 182 of the PC & Article 35 of the LADV	1
Rape and threats	Articles 172 & 157 of the PC	1
Sexual abuse of a minor - Incest	Article 177(2) of the PC	1
Sexual fraud, simple offences against physical integrity and termination of pregnancy	Articles 180 & 145 & 141 of the PC	1
Sexual exploitation of a third party	Article 174 of the PC	1
Infanticide and instigation	Articles 142 & 31 of the PC	1
Mistreatment of a spouse and rape	Articles 154 & 172 of the PC	1
Mistreatment of a minor	Article 155 of the PC	1
Mistreatment of a spouse and using a bladed weapon	Articles 154 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Mistreatment of a spouse and threats	Articles 154 & 157 of the PC	1
Simple offences against physical integrity – DV, property damage and threats	Article 145 KP & Article 35 of the LADV & Articles 258	1

	& 157 of the PC	
Simple offences against physical integrity - DV, threats and using a bladed weapon	Article 145 of the PC & Article 35 of the LADV, Article 157 of the PC Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Aggravated homicide - DV and using a bladed weapon	Article 139 of the PC & Article 35 of the LADV & Articles 2.1 (f) and 20 of Law No. 5/2017	1
Sexual coercion and simple offences against physical integrity - DV	Articles 171 & 145 of the PC & Article 35 of the LADV	1
Attempted homicide - DV and using a bladed weapon	Articles 23 & 138 of the PC & Article 35 of the LADV & Article 2.1 (f) and Article 20.2 of Law 5/2017	1
Termination of pregnancy and serious coercion	Articles 141(1) & 159 of the PC	1
Infanticide	Article 142 of the PC	1
Termination of pregnancy	Article 141 of the PC	1
Public disclosure of private information and threats	Articles 183 & 157 of the PC	1
Passive corruption for an unlawful act and active corruption - Corruption	Articles 292 & 294 of the PC	1
Intentional mismanagement, embezzlement and aggravated forgery - Corruption	Articles 274 & 295 & 304 of the PC	1
Embezzlement, forgery of documents or technical report and aggravated forgery - Corruption	Articles 295 & 303 & 304 of the PC	1
Intentional mismanagement, embezzlement, misappropriation of public assets, and forgery of documents or technical report - Corruption	Articles 274 & 295 & 296 & 303 of the PC	1
Forgery of documents or technical report - Corruption	Article 303 of the PC	1
Aggravated forgery, money laundering and assisting a criminal - Corruption	Articles 304 & 313 & 290 of the PC	1
Disobedience and failure to fulfill an obligation to provide food assistance	Articles 244 & 225 of the PC	1
Aggravated homicide and attempted homicide	Articles 139 & 24 & 138 of the PC	1
Aggravated homicide, attempted homicide and use of bladed weapon	Articles 139 & 23 & 138 of the PC & Article 2.1 b and	1

	Article 20.1 of Law No. 5/2017	
Aggravated abuse of trust and aggravated forgery	Articles 257 & 304 of the PC	1
Threats and larceny	Articles 157 & 251 of the PC	1
Forgery of documents or technical report	Article 303 of the PC	1
Aggravated forgery	Article 304 of the PC	1
Illegally importing or exporting goods or merchandise	Article 315 of the PC	1
Tampered or deteriorated products and obstructing public authority	Articles 214 & 243 of the PC	1
Homicide and use of bladed weapon	Article 138 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Aggravated receipt of stolen goods	Artigu 272 of the PC	1
Obstructing public authority and use of a bladed weapon	Article 243 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Property damage and use of a bladed weapon	Article 258 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Aggravated property damage and unlawful entry	Articles 259 & 185 of the PC	1
Aggravated homicide, property damage and violence, arson, and use of a bladed weapon	Articles 139 & 263 & 260 of the PC, Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Simple offences against physical integrity and use of a bladed weapon	Article 145 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Aggravated abuse of trust	Article 257 of the PC	1
Attempted homicide and use of bladed weapon	Articles 23 & 138 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Kidnapping	Article 160 of the PC	1
Attempt, punishability of attempt, homicide and arson	Articles 23 & 24 & 138 of the PC, Article 35 of the LADV & Article 263 of the PC	1
Obstructing freedom of choice	Article 234 of the PC	1
Simple offences against physical integrity and instigation to commit a crime	Articles 146, 189 of the PC	1
Aggravated homicide, simple offences	Articles 139 & 145 & 258	1

against physical integrity and property damage	of the PC	
Fraud and aggravated forgery	Articles 266 & 304 of the PC	1
Abuse of power	Article 297 of the PC	1
Simple offences against physical integrity and use of a bladed weapon	Article 145 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Aggravated fraud	Article 267 of the PC	1
Manslaughter, driving without a license	Articles 140 & 207 of the PC	1
Attempt, punishability of attempt, homicide	Articles 23 & 24 & 138 of the PC	1
Crimes against flora and fauna	Article 217 of the PC	1
Abuse of power and simple offences against physical integrity	Articles 297 & 145 of the PC	1
Disobedience	Article 244 of the PC	1
Simple receipt of stolen goods	Article 271 of the PC	1
Property damage with violence, simple offences against physical integrity, using a bladed weapon	Articles 260 & 145 of the PC & Article 2.1 (f) and Article 20.2 of Law No. 5/2017	1
Disrespect for national symbols	Article 206 of the PC	1
Practicing martial arts and using a bladed weapon	Article 25 of Law No. 5/2017	1
Illegal gambling	Article 322 of the PC	1
Total		710

Table B: Civil cases monitored by JSMP in 2020

Case type	Articles	Number
Exercise of parental authority	Articles 1757, 1758(1), 1759, 1762, 1765, 1786, 1787(2), 1782, 1804 and 1805 of the CC	14
Inventory	Articles 846, 1917 of the CC	2
Judicial and extrajudicial embargo	Articles 334, 305, 309 of the CPC	2
Questions and complaints, recording the submission of the procedural documents	Articles 26 of the TL Constitution, Articles 1225,1232,1237,1207,1717,1178,1180,1881,1182 of	1

	the CPC	
Action injurious to personal standing or good name	Article 418 of the CC	1
Declaratory procedure for conviction		1
Adoption	Article 1854 of the CC	1
Divorce	Article	1
Total		23

Table C: Cases monitored by JSMP in 2020 at each court

Court	Criminal	Civil	Total
Dili	181	12	193
Baucau	180	2	182
Suai	191	7	198
Oecusse	158	2	160
Total	710	23	733

Table D: Statistics about criminal cases at the Court of Appeal and District Courts in 2020

Jurisdiction	Pending from 2019	New cases 2020	Decisions 2020	Pending for 2021
Court of Appeal	79	187	259	7
Dili Court	2045	1502	1808	1748
Baucau Court	294	531	431	394
Suai Court	966	642	761	847
Oecusse Court	353	330	314	369
Total	3737	3192	3573	3365

Table E: Statistics about civil cases at the Court of Appeal and District Courts in 2020

Jurisdiction	Pending from 2019	New cases 2020	Decisions 2020	Pending for 2021
Court of Appeal	16	64	66	14
Dili Court	1000	398	382	1016
Baucau Court	217	58	45	230
Suai Court	268	128	86	310
Oecusse Court	103	41	13	131
Total	1604	689	592	1701

ANNEX B: CASES OF CORRUPTION MONITORED BY JSMP UNTIL A DECISION WAS REACHED IN 2020

Case Number	Case Type and Article	Defendant's name	Defendant's profession*	Chronology	Decision
Dili District Court					
0945/12. TDDIL	Economic involvement in business- Article 299 of the PC	Vicente Guterres, João Rui, Francisco Soares Burlaco	Former Vice President of the National Parliament, Former Secretary General of the National Parliament, Former Director General of Procurement at the Ministry of Finance	The public prosecutor alleged that in 2007 the National Parliament approved the 2008 State Budget and approved US\$ 910,000.00 to purchase 27 cars for the President of the National Parliament, as well as members of parliament within the chair of the parliament and 9 specialized committees. However, in the 2008 rectification budget the National Parliament decided to add US\$ 1,400,000.00 to the US\$ 910,000.00 for a budget of US\$ 2,310,000.00 to purchase Toyota Prados for the 65 members of parliament. In March 2008 the Midori Motors company presented to the Director of the National Parliament National a proposal for the acquisition of 65 Toyota	<p>After considering all of the facts, the court found that the Midori Motors company signed a contract with the Directorate of Procurement, within the Ministry of Finance to purchase Toyota Pajeros valued at US\$33,400.00, whilst at that time the National Parliament approved funds of US\$2,310,000.00.</p> <p>The court found that that it had not been proven that the defendants had conspired with the Midori Motors company to gain an advantage from the decision to substitute the Toyota Prados with Mitsubishi Pajeros, because the decision to change the make of car was made by the President of the National Parliament at that time, Fernando Lasama de Araújo, who made the decision</p>

				<p>Land Cruiser Prados for a total of US\$ 2,171,000.00 with each car valued at US\$33,400.00.</p> <p>According to the proposal, the payments would be split into two, with the first payment of US\$910,000.00 and the second payment of US\$1,261,000.00 which would be covered by the rectification budget.</p> <p>In April 2008 the defendant Vicente Guterres was acting as the President of the National Parliament, because the President of the National Parliament at that time, Mr. Fernando Lasama, was the acting President of the Republic to replace Dr. Ramos Horta who suffered an injury because he was shot by a group led by Major Alfredo.</p> <p>The defendant Vicente Guterres at that time prepared an order to accept the proposal from the Midori Motors company and requested for</p>	<p>jointly in a meeting with the leaders of the parliamentary benches.</p> <p>The court found that the defendants signed a contract with the Midori Motors company to purchase 65 Toyota Prados for the members of parliament in the second legislature totalling US\$2,310,000.00 but it was proven that after signing and payment for the first phase the Midori Motors company informed them that the Toyota Prados were unavailable so they asked for flexibility to substitute the vehicles with Mitsubishi Pajeros for the National Parliament.</p> <p>At that time the Midori Motors company sent a letter to the Directorate of Procurement, within the Ministry of Finance and the aforementioned directorate immediately sent the letter to the National Parliament that was given authorization by the late Fernando Lasama de Araújo, who was the President of the Parliament Nacional at that time,</p>
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				<p>single source procurement after receiving proposals from several companies.</p> <p>In April 2008, the defendant João Rui Amaral together with the defendant Vicente Guterres signed a single source procurement for the Midori Motors company with the reason that this company provided cars for the best price with a letter of justification sent to the defendant Francisco Soares Burlaco as the Director of Procurement in the Ministry of Finance and also informed the Minister of Finance at that time Ms. Emilia Pires.</p> <p>On 3 June 2008, the Midori Motors company together with the Ministry of Finance signed a contract to purchase 27 cars for the members of parliament for US\$910,000.00 with the requirement that these cars needed to be delivered on 30 June 2008 and this contract was also signed by the Prime Minister at that time Xanana</p>	<p>on the basis that the members of parliament really needed cars.</p> <p>Based on these considerations the court decided that the defendants did not commit any acts that fulfilled the elements of Article 3 of Law No. 31/1999 in conjunction with Article 299 of the Penal Code on economic participation in business in relation to the allegation that the defendants obtained a benefit from substituting the Toyota Prados with Mitsubishi Pajeros.</p> <p>The court concluded this matter and decided to acquit the three defendants from the charges of the public prosecutor. After reading out its decision the Public Prosecution Service stated that it would not lodge an appeal. Therefore the decision of the court was considered final.</p>
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Gusmão.

However on 4 July 2008, the Midori Motors company presented a letter of justification to the Ministry of Finance with the knowledge of the President of the National Parliament to say that the company could not purchase Toyota Prado cars because of a change of price in the market and therefore requested for them to be substituted with Mitsubishi Pajero cars with the same price as the Toyota Prados, or US\$33,400 for each car. Therefore, on the same day the President of the National Parliament informed the Ministry of Finance that he accepted this change.

In November 2008 the defendant Francisco Soares Burlaco requested for the Directorate of Treasury within the Ministry of Finance to make a payment to the Midori Motors company. In February 2009, the Midori Motors company

provided 65 cars to the National Parliament.

The prosecutor stated that the defendants jointly allowed the Midori Motors company to provide Pajero Mitsubishi cars to replace the previous contract because they were cheaper than the Toyota Land Cruiser Prados. Because at that time the actual price of the Mitsubishi Pajero cars was US\$33,000, but the aforementioned company maintained the same price as the Prado cars, which was US\$33,400.

However, previously the Nova Breeding and Training Unipessoal company that had participated in the public tender to purchase these cars was able to provide each car at a price US\$400 cheaper than the Midori Motors company. However, the defendants decided to proceed with single source procurement from Midori Motors.

				<p>The defendants knew that only an international tender would be able to guarantee that the State could make the best acquisition in terms of price. The defendants' behaviour caused the State to suffer a loss of US\$ 10,800.00. Therefore, each of the defendants is obliged to contribute money to pay for this loss.</p> <p>The prosecutor alleged that the three defendants violated Article 3.1 of Law No. 31/1999 on the Eradication of the Crime of Corruption in conjunction with Article 299 of the Timor-Leste Penal Code on economic participation in business.</p>	
0061/19. CACTL	Misappropriation of public assets - Article 296	Carlos Luis da Silva Colo	Public servant at the Institute for Business Development Support (IADE)	<p>The public prosecutor alleged that on 30 June 2019, as part of a joint operation between the Anti-Corruption Commission, the PNTL and the National Directorate of State Assets and Roads conducted a check point in Dili for State transport being used on holidays or outside of</p>	<p>After evaluating all of the facts, the court found that the defendant took the motorcycle belonging to the State on a Sunday without permission.</p> <p>Based on the facts that were proven and consideration of all of the mitigating circumstances,</p>

				<p>working hours without permission.</p> <p>On that day the joint team stopped the defendant who is a public servant at the Institute for Business Development Support (IADE) because on Sunday the defendant was riding a Supra X State motorcycle with the Number Plate 8767.G.</p> <p>IADE handed over the motorcycle to the defendant to do his job and the defendant knew that IADE prohibited all of its staff from using the transport on holidays without express permission. However, the defendant rode the motorcycle on Sunday without permission.</p> <p>The public prosecutor alleged that the defendant violated Article 296 of the Penal Code on the crime of misappropriation of public assets that carries a maximum penalty of two years.</p>	<p>namely that the defendant confessed, regretted his actions, and collaborated with the court, the court concluded this matter and imposed a prison sentence of three months against the defendant, suspended for one year, and ordered the defendant to pay court costs of US\$ 30.</p>
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0066/18. PNSIC	Passive corruption for an unlawful act, active corruption - Articles 292, 294 of the PC	Leovigildo dos Santos and Chen Gou Hay	Public servant at the Ministry of Commerce and Industry & Entrepreneur	<p>The public prosecutor alleged that on an unspecified date in January 2018 the police searched the defendant Chen Gou Hay and confiscated the defendant's passport. On an unspecified date the defendant Leovigildo, who is a public servant at the Ministry of Commerce and Industry, rang the witness Shoaling to help to obtain the defendant Chen's passport from the police.</p> <p>Then in March 2018, at 12pm, the defendant Leovigildo took a Toyota Rush car to meet with the defendant Chen Gou Hay and the witness Shoaling in front of the Land Mark shop, during this meeting the defendant Chen gave US\$500.00 to the defendant</p>	<p>After evaluating all of the facts produced during the trial, the court found that the defendant Leovigildo was guilty of committing the crime of passive corruption for an unlawful act because the defendant is a public servant and he received money from the defendant Chen and promised to obtain the defendant Chen's passport which was not the competence of the defendant Leovigildo.</p> <p>Also regarding the defendant Chen, the court found him guilty of committing the crime of active corruption because he gave money to the defendant Leovigildo with the intention of getting his passport back which was not the competence of the defendant Leovigildo and is unlawful.</p>

				<p>Leovigildo as security so that the defendant Leovigildo could obtain the defendant Chen Gou Hay's passport that had been confiscated by the police.</p> <p>The defendant Leovigildo received the US\$500.00 from the defendant Chen Gou Ha but until now the defendant Leovigildo has not handed over the defendant Chen Gou Hay's passport.</p> <p>The defendant Leovigildo as a public servant wanted to benefit from not adhering to his obligations. The defendant Chen Gou Hay said that he promised a financial benefit to the defendant Leovigildo as a public servant that he is not entitled to.</p> <p>The prosecutor alleged that the defendant Leovigildo violated article 292 (1) of the Penal Code on passive corruption for an unlawful act which carries a sentence of 3 - 15 years in prison, and regarding the</p>	<p>Based on the facts that were proven during the trial, and after considering all of the circumstances, the court concluded the matter and sentenced the defendants Leovigildo and Chen to 3 years in prison, suspended for 4 years. The court also ordered the defendants to pay court costs of US\$ 100 each.</p>
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				<p>defendant Chen Gou Ha, the prosecutor alleged that he violated Article 294 (1) on the crime of active corruption which carries a sentence of 3 - 10 years in prison.</p>	
0014/19 CACTL	Misappropriation of public assets - Article 296	Abrão Mario do Santos and Aurelio Afonso do Santos	Public servant at the Liquiça Municipality Administration	<p>The prosecutor alleged that the defendant Abrão Mario do Santos was a public servant at the Liquiça Municipality Administration and accepted a Hilux State car to facilitate his work on work days.</p> <p>On 24 May 2019 the defendant Abrão Mario do Santos authorized the defendant Aurelio Afonso do Santos, who is his younger brother, to use the aforementioned car to go to a family marriage party in Manufahi Municipality.</p> <p>On 25 May 2019, a Saturday morning, the defendant Aurelio Afonso dos Santos was driving the car to go to Manufahi municipality, but when he was on the new road in Manleuana,</p>	<p>After evaluating all of the facts, the court found that the defendant Abrão Mario dos Santos is a public servant at the Liquiça Municipality Administration, and he received a Hilux State car to facilitate his work but the defendant gave the car to the defendant Aurelio to go to a family marriage party in Manufahi Municipality.</p> <p>On the following day, Saturday morning, when the defendant Aurelio was driving the car on the new road in Manleuana a joint operations team conducted a spot check and confiscated the car and detained the defendant.</p> <p>Based on the facts that were proven, and consideration of all of the circumstances, the court</p>

			<p>a joint team operation conducted a spot check and confiscated the car and detained the defendant.</p> <p>The public prosecutor alleged that the defendants violated Article 296 of the Penal Code on the crime of misappropriation of public assets that carries a maximum penalty of two years in prison.</p>	<p>concluded the matter and ordered the defendants to pay a fine of US\$ 90.00 each, to be paid in daily instalments of US\$ 1.00 for 90 days. The court also imposed an alternative penalty of 60 days in prison if the defendants do not pay this fine</p>
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0022/19. CACTL	Misappropriation of public assets - Article 296	Jonas Sarmiento Carmona and Francisco Doutel Sarmiento	Contracted public servants at the Secretary of State for Veteran Affairs	<p>The public prosecutor alleged that on 22 June 2019, at approximately 5:30pm, a joint team comprising the Anti-Corruption Commission (CAC), Timor-Leste National Police (PNTL), National Directorate of Land Transport (DNLT) and the National Directorate of State Assets conducted a joint operation against State vehicles being used on a holiday in Manleuana.</p> <p>During this joint operation the team managed to stop a vehicle with the number plate 05-566 G that was being driven by the defendant Jonas Sarmiento who is the son of the defendant Francisco Doutel who was also in the vehicle.</p> <p>The joint team searched the car and identified that the defendant Francisco Doutel and the defendant Jonas Sarmiento do Carmo were using the vehicle without documents such as a written authorisation to use the car</p>	<p>After evaluating all of the facts, the court found the defendants guilty of committing the crime of misappropriation of public assets in accordance with the charge of the public prosecutor because the defendants were using a State vehicle on a Sunday without authorization from a superior.</p> <p>Based on the facts that were proven, the court concluded this matter and issued an admonishment against the defendants and ordered the defendant Francisco Doutel Sarmiento to pay civil compensation of US\$200.00 and court costs of US\$100.00. Meanwhile the defendant Jonas Sarmiento do Carmo was ordered to pay civil compensation of US\$50.00.</p>
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and also a written authorization from a superior that would allow the defendants to use this car on a holiday/outside of working hours. Therefore, the joint team decided to apprehend the vehicle.

The defendant Francisco said that the vehicle with number plate 05-566 G belonged to the State/Secretary of State for Veteran Affairs and was allocated to the defendant to be used only during working hours.

The defendant Jonas Sarmiento do Carmo who is the son of the defendant Francisco Doutel Sarmiento works as a contracted public servant at the Secretary of State for Veteran Affairs as a driver to facilitate the work of the defendant Francisco Doutel Sarmiento as part of the Homage Commission.

The commission gave a Hilux vehicle with number plate 05-

655G to the defendant Francisco Doutel Sarmiento between 2015 - 2019 with a weekly fuel voucher of US\$60.00.

The public prosecutor alleged that the two defendants violated Article 296 of the Penal Code on the crime of misappropriation of public assets that carries a maximum penalty of two years in prison.

0035/15.PGCC	Embezzlement, Misappropriation of public assets, intentional mismanagement no forgery of documents or technical report - Articles 274, 295, 296, 303 KP	Gastão de Sousa, Diego da Costa, Martinho Gusmão, Jordão Maria de Jesus Sousa, Ferilio Afonso Badoloi Sousa	Minister Of Public Works, Office Chief at the Ministry of Public Works (POM), Priest at the Manatuto Diocese	<p>The public prosecutor alleged that on 28 February 2010, the Timor-Leste Government signed an agreement with the Asia Development Bank (ADB) to carry out a funding project with a total budget of US\$ 46,000,000.</p> <p>This project allocated funding for the rehabilitation and construction of roads in Liquiça and Batugadé. The project ended in 2012 and the unused money totalling US\$ 82,776.77 needed to be returned, together with eight vehicles.</p> <p>From these vehicles, the Ministry of Public Works received two vehicles, a Toyota Land Cruiser with the number plate 18-948 TLS, and a Toyota Kijang Innova with the number plate 19-754 TLS which were given to the defendant Diogo da Costa as the Office Chief of the Ministry of Public Works.</p> <p>In reality only information was</p>	<p>After evaluating all of the facts, the court amended the charges and upgraded the charge to the crime of misappropriation of public assets (Article 296)[4] against the defendant Gastão de Sousa.</p> <p>Based on this amendment the court consider that the defendant Gastão de Sousa was guilty of committing the crime of embezzlement and being the co-perpetrator of the crime of misappropriation of public assets because the defendant had knowledge that the Innova State owned vehicle was being used by the defendant Diogo da Costa for private purposes.</p> <p>Based on the facts that were proven, the court convicted the defendant Gastão de Sousa for the crime of embezzlement with a prison sentence of 2 years and six months, and for the crime of misappropriation of public assets he was given a prison sentence of 1 month. The court accumulated these two penalties into a single penalty of 2 years and six months</p>
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				<p>provided about two other vehicles, namely a Toyota Rav4 with the number plate 18-723 TLS, and a Toyota Land Cruiser Prado with the number plate 18-947TLS.</p> <p>After receiving these vehicles, according to a verbal instruction given by the defendant Gastão de Sousa, the Department of Logistics at the Ministry of Public Works, was not informed about these vehicles. The agreement and collaboration was aimed at removing the registration of these two vehicles, which were assets belonging to the State.</p> <p>On 24 September 2012 the defendant Gastão de Sousa communicated with the ADB about his decision to allocate two vehicles with the number plates 18-948 and 19-754 to the Management Project Unit, including maintenance and fuel supplies financed by ADB, but in reality the vehicle with the number plate 18-948 was kept</p>	<p>in prison, suspended for 2 years and 6 months.</p> <p>Meanwhile for the crime of intentional mismanagement (co-perpetrator), the court acquitted the defendant from this charge. The court also ordered the defendant Gastao Sousa to pay civil compensation to the State of US\$532.34 for money used to maintain the vehicle of the defendant Martinho Gusmão with funds from the ADB.</p> <p>Also, the court also ordered the defendant Gastão Sousa to pay civil compensation to the State of US\$1,733.92 for expenses from the defendants Ferlio Sousa and Jordão Sousa for fuel between 2013 and January 2015 with funds from the ADB. The court also ordered the defendant to pay court costs of US\$200.</p> <p>Also, the court convicted the defendant Diego da Costa. The court found him guilty of the crime of embezzlement and misappropriation of public assets</p>
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				<p>at the home of the defendant Gastão de Sousa in Bekusi karaik Sub-Village, Bekora Village. The defendant Gastão de Sousa also allowed his two sons the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa to use this car for private purposes and they forged his signature to fill up fuel from Tiger Fuel and used the vehicle to drive around Dili.</p> <p>The defendant Gastão de Sousa also allowed the defendant Diogo da Costa to twice perform maintenance on the car with the number plate 18-948 using ADB money. On an unspecified date in May 2014, the defendant Martinho Gusmão made a verbal request for the defendant Gastão de Sousa to request a vehicle to make preparations for a ceremony commemorating 200 years of the Manatuto Diocese on the 13th May 2014. The defendant Gastão de Sausa personally</p>	<p>because the defendant used a State owned car for personal use and conducted maintenance and used State fuel for a private car.</p> <p>Also, after handing over the State owned car to the defendant Martinho Gusmão, the defendant Diogo used a private car with ADB fuel. Therefore the court convicted the defendant Diego da Costa for the crime of embezzlement with a prison sentence of 1 year, and for the crime of misappropriation of public assets he was given a prison sentence of 6 months. The court accumulated these two penalties into a single penalty of 1 year and six months in prison, suspended for 1 year and 6 months.</p> <p>The court acquitted the defendant Martinho Gusmão for being complicit in the crime of intentional mismanagement because the defendant used the car to make preparations to commemorate 200 years of the Manututo Diocese because he was authorized by the PM Xanana Gusmao.</p>
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				<p>handed over the car with the number plate 19-754 TLS that was used for private purposes by the defendant Diogo da Costa.</p> <p>The defendant Martinho Gusmão used this vehicle for 1 year and 3 months and when he used the vehicle the defendant Martinho Gusmão twice requested for the defendant Gastão de Sousa to perform maintenance on this vehicle using funds from ADB totaling US\$ 532.34.</p> <p>The indictment stated that these goods and equipment belonged to the State, however the defendants took advantage of public property for personal gain even though they knew that their acts would disadvantage the State.</p> <p>The public prosecutor alleged that the defendant Gastão de Sousa violated Article 295 of the Penal Code on embezzlement that carries a</p>	<p>The court also acquitted the defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi da Sousa as co-perpetrator for the crime of embezzlement because the two defendants to the car to fill it up with petrol at the instruction of the defendant Gastão Sousa and they also didn't know that this car was State owned because it had private number plates. The court maintained its previous decision.</p> <p>Previously the Court of First Instance convicted the defendant Gastão de Sousa for the crime of embezzlement with a prison sentence of 2 years and six months, and for the crime of misappropriation of public assets he was given a prison sentence of 1 month. The court accumulated these two penalties into a single penalty of 2 years and six months in prison, suspended for 2 years and six months. For the crime of intentional mismanagement (co-perpetrator) the court acquitted the defendant from this charge.</p>
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			<p>sentence of 3-10 years in prison and as co-perpetrator of Article 274 of the Penal Code on intentional mismanagement.</p> <p>The defendant Diogo da Costa was charged by the prosecutor for violating Article 295 of the Penal Code on embezzlement and crime of misappropriate of public assets (Article 296) and Article 303 (a) of the Penal Code on forgery of documents or technical report.</p> <p>The defendant Martinho Gusmão was charged by the prosecutor for being complicit in the crime of intentional mismanagement (Article 274 of the PC). The defendants Jordão Maria de Jesus Sousa and Ferlio Afonso Badoloi Sousa were charged by the prosecutor as co-perpetrators of the crime of embezzlement (Article 295).</p>	<p>The Court of First Instance convicted the defendant Diego da Costa for the crime of embezzlement with a prison sentence of 1 year, and for the crime of misappropriation of public assets he was given a prison sentence of 6 months. The court accumulated these two penalties into a single penalty of 1 year and 6 months in prison, suspended for 1 year and six months.</p>
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Mission

Work in a spirit of collaboration to improve and protect democracy, law, justice and human rights through, Monitoring, Legal education, and Advocacy.

vision

A democratic society that guarantees justice and human rights for all.

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