

# Children's Access to Formal Justice in Timor-Leste

*A Status Report*



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁL

This report was produced with financial and technical support from:



and



SUPPORT TO ESSENTIAL SERVICES  
FOR ENDING VIOLENCE AGAINST  
WOMEN  
A Bilateral Co-operation between the  
Governments of Timor-Leste and Australia  
2014



Copyright 2014

### Judicial System Monitoring Programme (JSMP)

JSMP is a national not-for-profit organisation working to improve the judicial and legislative systems in Timor-Leste.

JSMP's vision is a democratic society that guarantees justice and human rights for all. JSMP works in a spirit of collaboration to improve and protect democracy, law, justice and human rights through:

- monitoring
- legal education, and
- advocacy.

JSMP's donors:



EMBASSY OF FINLAND



SUPPORT TO ESSENTIAL SERVICES  
FOR ENDING VIOLENCE AGAINST  
WOMEN  
TIMOR-LESTE  
A Bilateral Co-operation between  
the Governments of Timor-Leste  
and Australia 2014



# Children's Access to Formal Justice in Timor-Leste

## *A Status Report*

Report author: Mariana Pinto

Research team: Mariana Pinto, Rita Guterres and H lio da Silva

  JSMP 2014

May 2014 [amended October 2014]

Judicial System Monitoring Programme (JSMP)

## Table of Contents

Executive Summary .....	3
Acronyms.....	5
Terminology.....	6
1. Introduction .....	7
1.1. Report objectives .....	7
1.2. Methodology .....	8
2. Child Justice Situation in Timor-Leste .....	10
2.1. Background .....	10
2.2. Legal Framework .....	11
2.3. The Child Protection System .....	29
2.4. Accessibility of the Formal Justice System .....	36
3. Accessing the Formal Justice System .....	42
3.1. Child Victims .....	44
3.2. Children in Conflict with the Law .....	68
3.3. Children Involved in Civil Proceedings .....	75
4. Conclusions.....	81
5. Recommendations .....	85
Bibliography .....	91
Annex I – JSMP Court Monitoring Statistics .....	93
Annex II - Interviews and Roundtable Discussions with Key Stakeholders. .	100

## Executive Summary

In March 2014, the United Nations' Human Rights Council dedicated its Annual Full-day Meeting on the Rights of the Child to the matter of *Access to Justice for Children*. On that occasion, the Human Rights Council recalled that "*children are entitled to the same legal guarantees and protection as are accorded to adults, including all fair trial guarantees, while enjoying at the same time the right to special protection because of their status as children*".<sup>1</sup>

Children's right to access justice makes children's other human rights a reality. Access to justice for children means that children must be able to use and trust the legal system to protect their human rights. It covers every instance in which a child comes into contact with the law, whether the child seeks out the legal system - e.g. as a victim or rights bearer - or the legal system seeks out the child - e.g. as a witness or as a child in conflict with the law.<sup>2</sup>

In Timor-Leste, there are still great obstacles to the realisation of children's right to access justice. As a nation in the process of rebuilding itself, there are various factors hindering the realisation of this right.

Between March 2013 and April 2014, JSMP researched the challenges affecting children's right to access formal justice in Timor-Leste. During this period, JSMP monitored approximately 50 court cases involving children, interviewed more than 70 key stakeholders and analysed the child justice related legal framework.

JSMP found that most criminal cases involving children that reach the courts concern crimes of sexual and physical violence against children. While cases relating to crimes of sexual and physical violence are the most common type heard by the courts, JSMP's research and other sources indicate that cases which reach the court are likely to represent only a small minority of actual crimes committed against children due to a lack of understanding of the formal justice system, a widespread tolerance of violence against children and a preference for traditional justice resolution mechanisms.

Issues such as insufficient and poorly qualified human resources, extensive gaps in legislation, unclear mandates in child protection, and a poor understanding and flawed application of the law have been identified as some of the main factors impeding the realisation of children's right to access the formal justice system. The combination of such

---

<sup>1</sup> Resolution A/HRC/25/L.10 March 2014.

<sup>2</sup> This definition is in line with the definition used by the Child Rights International Network (CRIN). See, for instance, <https://www.crin.org/en/2014-un-annual-day-rights-child>

factors, among others, means that minimum international standards on child justice are not being met in Timor-Leste.

Greater efforts to increase the quality, specialisation and availability of services provided to children in contact with the formal justice system are needed in order for Timor-Leste to fulfil children's rights and abide by minimum international standards.

## **Recommendations**

In response to this report's findings, JSMP makes recommendations in the following key areas:

1. Understanding and documenting the children's rights situation in Timor-Leste;
2. Improving coordination between child protection actors;
3. Developing child justice related legislation and formalising the child protection system;
4. Increasing specialisation and capacity in child justice and child protection services;
5. Establishing monitoring mechanisms;
6. Assessing traditional justice in the context of children's rights;
7. Raising awareness of child justice matters and preventing juvenile delinquency.

Detailed recommendations are provided in section 5 of this report.

## Acronyms

ALFeLa - *Asisténsia Legal ba Feto no Labarik*

CRC - Convention on the Rights of the Child

CPO - Child Protection Officer

DRTL - Democratic Republic of Timor-Leste

ECOSOC - United Nations Economic and Social Council

IIMS - Integrated Information Management System

ILO - International Labour Organisation

JSMP - Judicial System Monitoring Programme

LADV - Law Against Domestic Violence

LCLE - Law on Community Leaders and their Election

MoJ - Ministry of Justice

MSS - Ministry of Social Solidarity

NCRC - National Commission on the Rights of the Child

NGO - Non-Governmental Organisation

PDHJ - *Provedoria para os Direitos Humanos e Justiça*

PNTL - *Polícia Nacional de Timor Leste*

PRADET - Psychosocial Recovery & Development in East Timor

SEFOPE - Secretary of State for Professional Training and Employment

UN - United Nations

UNICEF - United Nations Children's Emergency Fund

UNTAET - United Nations Transitional Administration in East Timor

VPU - Vulnerable Persons Unit

## Terminology

Below are some clarifications and descriptions of terms used throughout this report.

**Access to justice** - ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards.<sup>3</sup>

**Child / minor** - anyone under the age of 17 years, in accordance with the Timorese Civil Code.

**Children at risk** - children whose well-being, safety, health, moral formation, or education are in danger.

**Child-friendly justice** - a justice system where all legislation, proceedings and practices are sensitive to children's special needs.

**Child justice / justice for children** - approach aiming at ensuring that children are better served and protected by the justice system, that special legislation, proceedings and practices are available for all children who come into contact with the justice system.

**Child protection system** - set of laws, policies, regulations, procedures and services needed across all sectors - especially social welfare, justice, education, health, and security - put in place to prevent, respond to and resolve the abuse, neglect, exploitation and violence experienced by children in all settings.

**Child victim** - a child against who a crime has been committed.

**Children in conflict with the law** - minors who come into contact with law enforcement authorities because he or she is alleged as, accused of or recognized as having infringed criminal law.

**Formal justice system** - all law enforcement institutions, including the judiciary (criminal and civil), relevant ministries, the police, prisons, criminal investigation prosecution services and public defenders.

**Juvenile justice** - the area of criminal law applicable to minors who are over the age of criminal responsibility.

**Traditional / customary justice** - forms of justice enforcement and dispute resolution that are not an integrated part of the formal justice system and which have a degree of effectiveness, stability and legitimacy within a certain local community.

---

<sup>3</sup> For the purposes of this report, only access to the formal justice system is considered.

# 1. Introduction

## 1.1. Report objectives

Since its independence, Timor-Leste has ratified a number of important international instruments in the field of children's rights, such as the Convention on the Rights of the Child (CRC), and has produced legislation relevant to the guarantee of children's right to access the formal justice system. However, the implementation of these laws has proved challenging and international standards on child justice are still largely unmet.

To date, the issue of children in the justice system in Timor-Leste has not been considered in a holistic manner. Existing studies have separately focused on topics such as juvenile justice<sup>4</sup> and child protection.<sup>5</sup> Having recognised the relevance of conducting a comprehensive review of the current child justice situation in Timor-Leste, JSMP, in collaboration with UNICEF, has decided to undertake a research study on children's access to formal justice.

For the purpose of this report, access to justice refers to the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards, including the Convention on the Rights of the Child.<sup>6</sup>

The term child justice refers to the special approach the formal justice system adopts when children are involved in judicial cases in order to respect children's rights. Such an approach acknowledges that children have different needs from those of adults and therefore should enjoy a different specialised treatment within the formal justice system - the formal justice system should be child sensitive.<sup>7</sup> This means that children in conflict with the law who are criminally responsible should be dealt with by a specialised system - a juvenile justice system - which is different from the criminal system designed for adults, and that respects and protects their rights as children; and that child victims and witnesses should enjoy "an approach that balances the child's right to protection and that takes into account the child's

---

<sup>4</sup> Namely: UNICEF, *Timor-Leste Juvenile Justice Assessment & Strategy Paper*, 2012.

<sup>5</sup> Namely: UNICEF & The Ministry of Social Solidarity, *Mapping and assessment of the child protection system in Timor-Leste*, 2011.

<sup>6</sup> This definition is in accordance with the definition provided by the UN Common Approach to Justice for Children, September 2008, p. 4.

<sup>7</sup> See: OHCHR, *Access to justice for children - Report of the United Nations High Commissioner for Human Rights*, 2014, p. 3 and 4.

individual needs and views”.<sup>8</sup> Civil proceedings involving children as parties or rights' bearers also need to be child sensitive and be guided by the principle of the best interest of the child.

This report aims to provide an analysis of the realisation of children's right to access the formal justice system in Timor-Leste, encompassing all points of contact that children have with the formal justice system: as victims, witnesses, plaintiffs, affected parties and rights bearers. Its objective is to identify and assess the extent of the problems affecting the realisation of this right as well as to identify possible measures to address those problems. It is expected that recommendations and findings from this report will inform relevant stakeholders in the development of long-term intervention strategies in the area of child justice.

More concretely, this research focused on assessing how accessible the formal justice system is for children by analysing all phases of judicial proceedings, from reporting to the follow up of the children's situation after a case has been tried and closed. This means assessing how official authorities handle reports of crimes and judicial cases involving children, what services are available to guarantee respect for children's rights, how sensitive the justice system is to children's needs and their evolving capacities, and how well children that come into contact with the justice system are protected from harm.

This report's analysis focuses on the formal justice system, although it does not ignore the influential role of informal/traditional justice practices. The formal justice system is understood in this report as all law enforcement institutions, including the judiciary (criminal and civil), relevant ministries (e.g. the Ministry of Justice), the police, prisons, criminal investigation prosecution services and public defenders.<sup>9</sup>

## 1.2. Methodology

To accomplish the objectives this report sets out to achieve, data was collected using three main methods:

- Court monitoring of both criminal and civil cases involving children in all 4 district courts during approximately one year - from March 2013 to April 2014<sup>10</sup>;

---

<sup>8</sup> The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20 article 9(d).

<sup>9</sup> This definition is in accordance with the definition provided by the UN Common Approach to Justice for Children, p. 4.

<sup>10</sup> Detailed information and statistics on JSMP court monitoring of cases involving children are provided in Annex I of this report.

- Legislative analysis of laws currently in force as well as of some existing draft laws relevant to children's access to justice;
- Interviews with key stakeholders and parties, namely government institutions, judicial actors<sup>11</sup>, child protection officers and other social workers, NGOs working in the area of child justice, shelters and alternative care institutions, community leaders and children involved in the justice system conducted between September 2013 and April 2014.<sup>12</sup>

Interviews were conducted in 7 districts - Dili, Baucau, Ermera, Manatuto, Bobonaro, Covalima and Oecusse - covering at least 2 districts per court jurisdiction. The Oecusse District Court only serves the district of Oecusse.

In the context of this report's research, JSMP organised two roundtables with key stakeholders - one with civil society organisations and one with government and court actors - where the report's preliminary results and findings were presented and discussed. These roundtables were held to discuss the issues affecting children's right to access the justice system, to hear key stakeholders' views on this matter, to raise their awareness of the situation of children's access to justice in Timor-Leste and to build support for legislative reform.<sup>13</sup> The conclusions drawn from the roundtable discussions were also incorporated in this study.

In order to understand the conclusions of this report, it is important to recognise the limitations of this research. A major constraint was the lack or unavailability of accurate and current statistical data. Authorities do not seem to keep current records and most government and judicial institutions do not appear to be consistently using data collection systems. This, in itself, is also a finding that points to the low level of development of the formal justice system in Timor-Leste. Gaining access to existing data, even if inaccurate, has also been a cumbersome and not always successful task. This lack of reliable data has made it difficult to base some conclusions on more than JSMP's own statistics and anecdotal evidence.

---

<sup>11</sup> Public prosecutors, judges, police officers and public defenders.

<sup>12</sup> More detailed information on the interviews conducted for this research is provided in Annex II of this report.

<sup>13</sup> Detailed information on the two roundtables is provided in Annex II of this report.

## 2. Child Justice Situation in Timor-Leste

### 2.1. Background

In all countries, children are a particularly vulnerable group in society. When accessing justice children often face enormous challenges due to factors such as lack of information about their own rights and the justice system, dependence on adults, and a lack of child friendly procedures. In post-conflict countries, such as Timor-Leste, children's vulnerability is greater and the obstacles they face when accessing the justice system are often exacerbated by a weak rule of law and fragile public institutions.

Timor-Leste has an extremely young population with over half of its people being under 18.<sup>14</sup> A 2010 national survey on health and demographics provides some valuable data on Timor-Leste's child population at that point in time. The survey's final report illustrates several characteristics of the child population of Timor-Leste which reflect children's vulnerability, namely:

- Child poverty and child malnutrition are prevalent with just over 60% of children presenting signs of stunted growth<sup>15</sup>;
- Approximately 30% of children aged 6 to 11 years of age do not attend primary school<sup>16</sup>;
- 23% of the households in the country have underage orphans or foster children<sup>17</sup>;
- The birth of 45% of children under the age of 5 had not been registered<sup>18</sup>;
- Early marriage is common, especially for girls, with 24% of women aged 25-29 responding that they had been married by age 18<sup>19</sup>; and
- Youth unemployment is high with around 30% of young males aged 15-19 unemployed.<sup>20</sup>

However, detailed information on child justice is elusive. Statistics on child justice related issues – incidence of child abuse, juvenile justice, etc. – are scarce and often incomplete or incoherent. Yet, high incidences of child abuse have been repeatedly documented by

---

<sup>14</sup> *Timor-Leste Demographic and Health Survey 2009-10*, National Statistics Directorate Ministry of Finance. Available at [http://www.dne.mof.gov.tl/socio\\_demographic\\_surveys/documents/DHS%202009-10/Final%20Report%20TLDHS%202010.pdf](http://www.dne.mof.gov.tl/socio_demographic_surveys/documents/DHS%202009-10/Final%20Report%20TLDHS%202010.pdf)

<sup>15</sup> *Ibidem*, p. 150.

<sup>16</sup> *Ibidem*, p. 19.

<sup>17</sup> *Ibidem*, p. 13.

<sup>18</sup> *Ibidem*, p. 28.

<sup>19</sup> *Ibidem*, p. 81.

<sup>20</sup> *Ibidem*, p. 40.

different organisations.<sup>21</sup> Physical violence against children is widespread and is seen as a normal disciplinary method. Sexual violence, particularly against girls (including within the family)<sup>22</sup>, has been repeatedly reported as a pervasive problem. In relation to children in conflict with the law, the prevalence of gangs and “martial arts” groups<sup>23</sup> is frequently pointed out as a cause for the involvement of children in delinquent behaviour.<sup>24</sup> There is also a seemingly high incidence of sexual crimes perpetrated by minors.<sup>25</sup>

When it comes to child justice, Timor-Leste clearly has great needs. However, Timor-Leste’s justice and social service systems are still at an early stage of development, with very limited resources, and, most critically, with limited qualified human resources. This means that the response to the needs of child justice is limited and has many shortcomings. In addition, the persistent lack of key legislation, such as juvenile justice and child protection laws, makes the task of building an effective and child sensitive justice system even more difficult.

## 2.2. Legal Framework

As a new nation, Timor-Leste is currently undertaking the lengthy process of building its own legal system. Since its independence in 2002, Timor-Leste has passed a significant amount of legislation, including legislation that directly affects children. In relation to child justice in particular, there are a number of provisions included in a range of different laws that can, both directly and indirectly, have a significant influence on children’s access to justice. However, there remain persistent gaps in legislation in the field of child justice that hamper the fulfilment of children’s right to access justice. Most significantly, there is still no legislation on juvenile justice, child protection or institutional and alternative care. Another concern is the weak implementation of existing legislation that does protect children’s rights and improves their access to justice. A prime example is the failure to implement the Witness Protection Law.<sup>26</sup> Although not child specific legislation, this law could be very useful in ensuring the safety of child witnesses and victims.

---

<sup>21</sup> See, for instance: Asia Pacific Support Collective Timor-Leste (APSCTL), *Baseline Study on Sexual and Gender-Based Violence in Bobonaro and Covalima*, 2009; UNICEF, *Speak Nicely to Me: A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*, 2006.

<sup>22</sup> Judicial System Monitoring Programme (JSMP), *Incest in Timor-Leste: an Unrecognised Crime*, 2012. Available at <http://jsmp.tl/wp-content/uploads/2012/05/Incest-in-Timor-Leste-August-2012.pdf>

<sup>23</sup> In Timor-Leste, the expression “martial arts groups” is used to refer to groups of youth and men engaging in fighting and often involved in some sort of illegal activity such as stealing, vandalising property and drug use.

<sup>24</sup> Streicher, *The Construction of Masculinities and Violence: “Youth Gangs” in Dili, East Timor*, 2011. This phenomenon was also pointed out as a cause of juvenile delinquency by several of the people interviewed for this research.

<sup>25</sup> Asia Pacific Support Collective Timor-Leste (APSCTL), *Baseline Study on Sexual and Gender-Based Violence in Bobonaro and Covalima*, 2009. This tendency was also frequently pointed out in the interviews conducted by JSMP for this research.

<sup>26</sup> Law No. 2/2009 of the 6th of May.

Pursuant to the CRC, States must ensure that there is adequate legislation in place to guarantee access to justice for children, meaning the ability to challenge a rights violation and get an effective remedy. This ability is what makes children's other human rights a reality.

In its 2010 Strategic Plan for the Justice Sector<sup>27</sup>, the Government recognised the need to develop such a legal framework in Timor-Leste and put forward a strategy to fill gaps like these that included the enactment of legislation on juvenile justice and child protection.<sup>28</sup> Despite this, no such laws have yet been approved and these gaps persist.

This section aims to provide an overview and analysis of the most relevant legislation to children's access to justice that is currently in force, as well as to identify the main legislative gaps affecting this right.

### *The Constitution*

The Timorese Constitution broadly guarantees a universal right to access to justice. Article 26 states that "*Access to courts is guaranteed to all for the defence of their legally protected rights and interests*". Even though this applies to everyone without discrimination regarding age, article 18 on child protection states that "*Children shall enjoy all rights that are universally recognised*", which reinforces that the guarantee set out in article 26 also applies to children. Indeed, article 18 is the legal foundation for the universal recognition of children's rights in Timor-Leste. It further states that children shall enjoy all rights "*that are enshrined in international conventions normally ratified or approved by the State*" which means that crucial international instruments that have been incorporated in the Timorese legal system, such as the CRC, can be directly invoked.

Another important guarantee to children's access to justice is enshrined in article 132<sup>29</sup> which provides that children's legal representation shall always be assured by the Public Prosecutor in criminal and civil proceedings. It is important to note that the Prosecutor is required to represent the child and the child's interests and not, for instance, the interests of the child's family.

---

<sup>27</sup> Government Resolution No. 30/2010 of the 2<sup>nd</sup> of June.

<sup>28</sup> *Ibidem*, pages 4132, 4143 and 4153.

<sup>29</sup> Article 132/1 of the Constitution reads that "*Public Prosecutors have the responsibility for representing the State, taking criminal action, ensuring the defence of the underage, absentees and the disabled, defending the democratic legality, and promoting the enforcement of the law*".

## *Reception of International Law*

Timor-Leste has already ratified some important international legal instruments that advance the respect, promotion and protection of children's rights. According to article 9 of the Timorese Constitution, any international convention ratified by the State shall immediately become part of the Timorese legal system and prevail against any law that might contradict it.

The most relevant international instruments for child justice, and for children's rights in general, currently in force in Timor-Leste are the following:

- International Covenant on Civil and Political Rights – ratified in 2003<sup>30</sup>;
- International Covenant on Economic, Social and Cultural Rights – ratified in 2003<sup>31</sup>;
- Convention on the Rights of the Child–ratified in 2003<sup>32</sup>;
  - Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography–ratified in 2003<sup>33</sup>;
  - Optional Protocol on the Involvement of Children in Armed Conflict– ratified in 2003<sup>34</sup>;
- Convention on the Elimination of All Forms of Discrimination against Women – ratified in 2003<sup>35</sup>;
- United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – ratified in 2003<sup>36</sup>;
- Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption – ratified in 2009<sup>37</sup>;
- Additional Protocol to the Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children–ratified in 2009<sup>38</sup>;
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour–ratified in 2009.<sup>39</sup>

The most significant absences in this list are the Convention on the Rights of Persons with Disabilities, ILO Convention concerning Minimum Age for Admission to Employment and the

---

<sup>30</sup> Resolution of the National Parliament No. 3/2003, of the 22<sup>nd</sup> of July.

<sup>31</sup> Resolution of the National Parliament No. 8/2003, of the 17<sup>th</sup> of September.

<sup>32</sup> Resolution of the National Parliament No. 16/2003, of the 16<sup>th</sup> of April .

<sup>33</sup> Resolution of the National Parliament No. 17/2003 of the 17<sup>th</sup> of September.

<sup>34</sup> Resolution of the National Parliament No. 18/2003 of the 17<sup>th</sup> of September.

<sup>35</sup> Resolution of the National Parliament No. 11/2003 of the 17<sup>th</sup> of September.

<sup>36</sup> Resolution of the National Parliament No. 23/2003 of the 19<sup>th</sup> of November.

<sup>37</sup> Resolution of the National Parliament No. 28/2009 of the 9<sup>th</sup> of September.

<sup>38</sup> Resolution of the National Parliament No. 29/2009 of the 9<sup>th</sup> of September.

<sup>39</sup> Resolution of the National Parliament No. 9/2009 of the 8<sup>th</sup> of April.

Optional Protocol to the CRC on a Communications Procedure which are yet to be ratified by Timor-Leste.

There has been an effort by the Timorese State to accede to International Law instruments. However, this effort has not been followed up by due implementation at the legislative level. For instance, despite the ratification of the Convention on Inter-country Adoption in 2009, there continue to be no clear rules as to exactly what procedures the judicial authorities and the social services should follow in international adoption cases.

### *The Civil Code*

In civil law countries such as Timor-Leste, civil codes are one of the main pillars of the legal system covering a wide range of legal issues, from tort law to family law. In Timor-Leste, the Civil Code only entered into force in September 2011.<sup>40</sup> Until then, the Indonesian Civil Code<sup>41</sup> was the applicable legislation for most civil matters.

The Timorese Civil Code deals with several issues that directly impact children's lives, namely: it defines the age of majority, and regulates parental authority, legal representation of minors, child support, custody and adoption.

The repeal of the Indonesian Civil Code was, in many regards, an advancement towards a greater respect for human rights in Timor-Leste. In relation to children's rights in particular, it eliminated discrimination based on gender related to the legal age to marry and discrimination between legitimate and illegitimate children.

Despite not providing an exhaustive list of differences in provisions regarding children, the table below attempts to show the contrast between these two civil codes.

	<b>Indonesian Civil Code</b>	<b>Timorese Civil Code</b>
<b>Age of majority</b>	<b>21 years of age</b> <sup>42</sup> – article 330.	<b>17 years of age</b> <sup>43</sup> - article 126.
<b>Legal age to marry</b>	<b>18 years of age for boys and 15 years of age for girls</b> ; however, this age limit may be disregarded through the granting of dispensation by the Governor General - article 29. Minor	<b>16 years of age for both boys and girls</b> ; however, minors (under 17 years) need their parents' or guardian's authorisation to marry - articles 1490/a) and 1500.

<sup>40</sup> Law No. 10/2011, of the 14<sup>th</sup> of September.

<sup>41</sup> Promulgated by publication of April 39 1847 S.NO.23

<sup>42</sup> However, an individual under the age of 21 may lose the legal status of minor through emancipation gained through marriage.

<sup>43</sup> Also in the Timorese Civil Code, an individual can be emancipated through marriage authorised by his/her parents at the age of 16; see article 128.

	legitimate children (under 21 years) need their parents' authorisation to marry - article 35.	
<b>Illegitimate children's status</b>	Legitimate and illegitimate children are not afforded the same rights or the same status in matters concerning inheritance and establishment of parentage (articles 259-289).	In accordance with the Constitution <sup>44</sup> , the Civil Code does not grant different rights to legitimate and illegitimate children.
<b>Child participation in matters that directly affect his/her life</b>	Does not provide for child participation in custody and guardianship matters (article 229); does not guarantee child participation in adoption matters and in institutional placement at the request of the parents of guardian.	- Stipulates that minors aged 14 and above should be heard by the court in matters concerning guardianship (article 1815), regulation of parental authority by the court (article 1782). - Adoption of a child aged 12 and above is dependent on the child's consent (article 1860); the court is obliged to hear the children of the adoptive parents aged 12 and above (article 1863).
<b>Investigation of paternity and of maternity</b>	In certain cases, investigation of paternity and maternity is prohibited <sup>45</sup> (article 289).	There are no limitations preventing a child from legally pursuing an investigation to establish paternity (article 1749) or maternity (article 1694). <sup>46</sup>
<b>Equality between parents in what concerns the exercise of parental authority</b>	Mother and father do not have the same rights and powers in what concerns their children's upbringing. <sup>47</sup>	There are no provisions giving parents different powers and/or responsibilities based on their gender; both parents are equally responsible for their children's upbringing. <sup>48</sup>

FIGURE 1 - COMPARISON BETWEEN THE INDONESIAN CIVIL CODE AND THE TIMORESE CIVIL CODE

Despite being an important step forward in the process of building the Timorese legal system, and filling some enormous gaps, the current Civil Code has received extensive criticism, mainly due to the fact that little effort was made to tailor it to the local context. In

<sup>44</sup> Article 18/3 of the Constitution of the DRTL states that "*All children, born in or outside of wedlock, shall enjoy the same rights and the same social protection*".

<sup>45</sup> This is in violation of article 7 of the CRC, according to which the child has the right to know who his/her parents are.

<sup>46</sup> Article 1750 grants a mother who is still a minor the legitimacy to pursue legal action for the recognition of her child's father without the need to have her parents' legal consent.

<sup>47</sup> See, for example, article 300 which clarifies that the father is the main holder of parental authority.

<sup>48</sup> For instance, see articles 1782/1 and 1786 of the Civil Code.

the past, JSMP has also expressed concern about this issue<sup>49</sup>, namely that its excessive complexity exceeds the needs and capacity of the Timorese legal system.

However, currently the most pressing issue is the widespread lack of knowledge and understanding of the Civil Code. So far, there has been limited dissemination of the Civil Code. This is illustrated by the fact that, despite having entered into force in 2011, there is still no official translation into Tetum and almost no available printed versions besides the *Jornal da República*. During this research, judicial actors repeatedly underlined the urgent need for greater dissemination of basic information on the Civil Code.

Specifically in relation to children, the Civil Code contains some very important provisions that can result in a greater respect for children's rights. Listed below are some key provisions.

#### - **Age of majority and other age provisions**

The Civil Code sets the legal **age of majority at 17 years**.<sup>51</sup> In this regard, it is consistent with other previously existing provisions relating to age, such as the legal age for voting. Indeed, the Civil Code's age of majority is consistent with the Constitution's provisions on electoral rights<sup>52</sup> and citizenship<sup>53</sup> that set both the age for voting and for being able to choose Timorese citizenship at 17 years. Even though these age provisions are not always necessarily linked, it is usually the case in many countries that they coincide with the age of majority.<sup>54</sup> Unlike other laws that include inconsistent age provisions, such as the Penal Code<sup>55</sup>, the Civil Code is mostly consistent on this issue.<sup>56</sup>

Another important age threshold in the Civil Code is the age of 16 years. The Civil Code provides for some exceptions to minors' general lack of legal capacity when they reach 16

*"Sometimes, even the prosecutors don't know the [Civil Code's] rules. I've seen prosecutors put forward alimony cases where the wife was under 14. They don't understand that such a marriage cannot be valid and that actually they should be prosecuting a crime."*

- District Court Judge<sup>50</sup>

<sup>49</sup> Press release " President of Timor-Leste performs miracle by ratifying the Civil Code that contains more than 2000 articles in just one day " published on 19 September 2011, available at <http://jsmp.tl/wp-content/uploads/2012/06/President-of-Timor-Leste-performs-miracle-by-ratifying-the-Civil-Code-that-contains-more-than-2000-articles-in-just-one-day-19-September-2011.pdf>

<sup>50</sup> Interview conducted on 3/12/2013.

<sup>51</sup> Articles 118 and 126 of the Civil Code.

<sup>52</sup> Article 47 of the Constitution of the DRTL.

<sup>53</sup> Article 3, *ibidem*.

<sup>54</sup> See [www.unicef.org/rightsite/433:457.htm#to\\_vote](http://www.unicef.org/rightsite/433:457.htm#to_vote) (accessed in December 2013).

<sup>55</sup> This issue will be addressed below.

<sup>56</sup> See, for example, article 1500 on parental authorization to marry and article 1859 on the age limit for a person to be adopted.

years of age. For instance, children aged 16 years of age can legally marry, with their parent's permission/consent.<sup>57</sup> Other exceptions to the general age of majority are mostly related to the minor's ability to manage his or her own property and to make decisions about his or her education.<sup>58</sup>

#### - **Investigation of parentage**

To be able to know, whenever possible, one's parents is a right enshrined in article 7 of the CRC. The Timorese Civil Code reflects this right by granting people, including children, the right to initiate a lawsuit requesting the court to investigate his or her parentage.

#### - **Parental authority**

In its definition of parental authority, the Civil Code provides that parental authority shall always be exercised in the best interests of the child<sup>59</sup> and that children's views on important family matters should be taken into account.<sup>60</sup> In addition, parents are required to recognize their children's autonomy to make their own life decisions. This reflects the principles of the best interests of the child and of child participation.

The Civil Code comprises a full section<sup>61</sup> on parental authority with provisions on a range of issues including the administration of children's assets by the parents and removal of parental authority powers. Removal of parental authority powers can happen through a court decision whenever it is deemed that the exercise of such powers by the parents can pose a threat to the child's well being. For example, if a parent is the perpetrator of a crime against the child then provisions on the removal or limitation of parental authority would be applicable. Another example would be situations when a child's wellbeing is threatened and the child is removed by the authorities from his/her family and placed in alternative care. In such cases, the public prosecutor, as the minor's representative, should initiate civil proceedings on guardianship and on the regulation of parental authority powers.<sup>62</sup>

#### - **Child support**

Parents are under the general obligation to provide for their children. Even when parental custody has been removed or limited by a court decision, parents are still under the obligation to provide child support.<sup>63</sup>

---

<sup>57</sup> Article 1500/1.

<sup>58</sup> See articles 123/1/a), 1490, 1730, 1766, 1769 and 1841.

<sup>59</sup> Article 1758/1 of the Civil Code.

<sup>60</sup> Article 1758/2, *ibidem*.

<sup>61</sup> Section II, Chapter II, Title III of Book IV (Family Law) of the Civil Code.

<sup>62</sup> Article 1797 of the Civil Code provides that these proceedings can also be initiated by the child's relatives or by a person with legal or de facto guardianship.

<sup>63</sup> Article 1799, *ibidem*.

## - Custody

In principle, children's custody is shared in equal terms by both parents regardless of the parents being married or not.<sup>64</sup> In cases of divorce or separation of the parents, custody and other parenting arrangements - such as visiting rights and child support - can be settled through either an agreement between the parents or, when it is not possible to reach an agreement, through a court decision. In both cases, the best interests of the child must be the primary concern and any agreement between the parents needs to be reviewed by a court in order to ensure that it serves the child's best interests.<sup>65</sup>

## - Adoption

The Civil Code also contains provisions on the issue of adoption with its own dedicated component (Title "*Da Adopção*")<sup>66</sup>, filling an important gap in the legal system. The provisions included in this *Title* define the relevant principles, including the meaning of adoption, the rights and duties of the adopting parents, the rights of the adopted child, the powers of the courts in deciding adoption cases, etc. However, these provisions lack mechanisms for implementation. Without legislation establishing the competent authorities on the matter of adoption and the procedures to be followed, the Civil Code provisions are difficult to implement in practice.

## - Inheritance

Children have the legal capacity to inherit; however, they lack the general capacity to administer their assets. There are few inheritance law provisions specific to children in the Civil Code.<sup>67</sup> Unlike the Indonesian Civil Code, the Timorese Civil Code makes no differentiation on the rules applicable to heirs depending on their gender.

## *The Civil Procedure Code*

The Civil Procedure Code<sup>68</sup> does not contain many child specific provisions or child protection measures. However, there are some provisions that mention the best interests of the child as a guiding principle, such as article 17/3 concerning disagreement between the parents on the matter of the child's representation in court. In any case, as the Civil

---

<sup>64</sup> See articles 1782 and 1786, *ibidem*.

<sup>65</sup> Article 1787, *ibidem*.

<sup>66</sup> Articles 1853 to 1879, *ibidem*.

<sup>67</sup> One example of a provision specific to children is the "pupillary replacement" which consists in the ability parents have to decide who should inherit from their children in case the children die before they reach the age of majority (articles 2160 to 2163 of the Civil Code).

<sup>68</sup> Approved by Decree-law No. 1/2006, of the 21<sup>st</sup> of February.

Procedure Code is mainly composed of procedural provisions, the Civil Code's principles guide the application of such provisions.

The Civil Procedure Code provides for some special procedures including for alimony cases. It provides that whenever alimony cases involve child support, then the proceedings have an urgent nature and have to be prioritised by the court.<sup>69</sup>

The Civil Procedure Code also favours mediation of family disputes involving children, which can protect children from the distressing experience of being involved in public hearings.<sup>70</sup>

### *The Penal Code*

The Timorese Penal Code entered into force in April 2009<sup>71</sup> revoking the Indonesian Penal Code and transitional UNTAET regulations on criminal law. The entry into force of the Penal Code has introduced substantial changes to child justice related issues, such as the age of criminal responsibility and crimes perpetrated against children.

#### **Age of criminal responsibility and juvenile justice provisions**

Before the entry into force of the Penal Code, the minimum age for criminal responsibility was 12 years (for a serious crime) and 17 (for a minor crime). This system was due to a UNTAET Regulation<sup>72</sup> which raised the age from the Indonesian legal minimum age of 8 years. That regulation provided that children *“under 12 years of age shall be deemed incapable of committing a crime and shall not be subjected to criminal proceedings. A minor between 12 and 16 years of age may be prosecuted for criminal offences only in accordance with such rules as may be established in subsequent UNTAET regulations on juvenile justice; provided, however, that minors between 12 and 16 years of age may be prosecuted under the provisions of the present regulation for any offence which under applicable law constitutes murder, rape, or a crime of violence in which serious injury is inflicted upon a victim”*.

Currently, the **age of criminal responsibility is set at 16 years** with the Penal Code clearly stating that *“Minors under 16 are exempt from criminal liability”*.<sup>73</sup> Raising the age of criminal responsibility was a step forward towards greater compliance with recommended international standards. This has also led to concrete results such as the fact that there are

---

<sup>69</sup> Article 836 of the Civil Procedure Code.

<sup>70</sup> Articles 828 and 832, *ibidem*.

<sup>71</sup> Decree Law No. 19/2009, of April 8<sup>th</sup>.

<sup>72</sup> UNTAET Regulation No. 2000/30 on the Transitional Rules of Criminal Procedure.

<sup>73</sup> Article 20 of the Penal Code.

currently no children under the age of 16 detained in state prisons, whereas in the past children as young as 13 were detained in Becora Prison.<sup>74</sup>

The only provision that specifically addresses the matter of juvenile justice in the Penal Code is paragraph 2 of article 20 which states that “*For persons over 16 years of age and less than 21, the law shall determine specific provisions concerning application and execution of criminal penalties in any and all cases not provided for in specific legislation*”. This provision tells us two things:

- That the matter of juvenile justice shall be regulated by special legislation specific to that issue; and
- That such legislation should include special provisions on the application and execution of penalties handed down on children that have reached the age of criminal responsibility as well as youths until the age of 21.

Currently, such specific legislation on juvenile justice has not yet been passed leaving a gap that hampers the realisation of children’s right to access a child sensitive justice system that respects and protects them.<sup>75</sup> As a consequence of this gap, cases of children in conflict with the law who are above 16 are processed by the adult criminal justice system.

### **Crimes against children**

The Penal Code criminalizes many violations of children’s rights such as mistreatment of children, sexual abuse of children, child prostitution, child pornography, child labour, trafficking of children, and involvement of children in armed conflict. Although criminalising such practices is an essential starting point, it has to be followed by the strengthening of judicial and social welfare institutions so that they can be part of an effective child protection system which is able to prevent and address such crimes.<sup>76</sup>

Specifically in relation to sexual violence crimes perpetrated against children and especially girls, JSMP has expressed concern in the past regarding the limited protection given to victims in the Penal Code.<sup>77</sup> This is particularly true for victims of incest who are above the age of 14. While the Penal Code does not contain a specific crime of incest, victims below the age of 14 are protected by article 177 concerning sexual abuse of a minor, in combination with article 182 concerning aggravation on account of the familial relationship. Victims above the age of 14 are protected by articles 171 and 172 concerning sexual

---

<sup>74</sup> In November 2013, a young offender that is now 20 years old reported being first imprisoned in Becora when he was still 14, which was in 2006 before the entry into force of the Penal Code.

<sup>75</sup> This is analysed in more detail in section 3.2.

<sup>76</sup> The current situation of the child protection system is analysed in section 3.1.

<sup>77</sup> Judicial System Monitoring Programme (JSMP), *Incest in Timor-Leste: an Unrecognised Crime*, 2012. Available at <http://jsmp.tl/wp-content/uploads/2012/05/Incest-in-Timor-Leste-August-2012.pdf>

coercion and rape, in combination with article 173 concerning aggravation on account of the familial relationship, but only where the use of violence or serious threat of violence can be proven. An evidentiary burden such as the use of physical violence or serious threat in sexual violence crimes against children by close family members can be seen as quite archaic. Alternatively, victims may consent to the act of incest, but the validity of such consent must be questioned in light of the manipulative techniques that perpetrators of incest employ over a long period of time to devolve themselves of responsibility and persuade the victim to tolerate the crime.<sup>78</sup>

In addition, the terminology used in the Penal Code to differentiate sexual violence crimes perpetrated against children under and above the age of consent is rather inconsistent. Article 177, despite referring to "Sexual abuse of a minor" only applies to sexual abuse committed against children under 14 years of age, not to all minors (people under 17 years of age). This inconsistency can create some confusion that might influence the way a sexual violence crime perpetrated against a child above 14 years of age is perceived. Article 178 on the crime of "Sexual acts with adolescents" also gives rise to confusion as the concepts of *adolescent* and *relevant sexual acts* are not always understood by judicial actors.

Regarding physical violence, articles 145 and 146 punish offences against physical integrity which cause harm and serious harm and article 155 (mistreatment of a minor) protects children by punishing "*any person who provides guardianship or custody, or is responsible for the upbringing of a minor aged less than 17 years, or does so under employment, and causes harm to the minor's body or health, or inflicts physical or mental mistreatment or cruel treatment*". In addition, article 155/3 increases the penalty if the victim is related to the perpetrator (including by adoption). However, the Penal Code does not explicitly prohibit all forms of corporal punishment. Considering the broad acceptance of the use of physical violence to discipline children, it would be important for the law to explicitly provide that no kind of such punishment is acceptable or lawful.

### *Penal Procedure Code*

Like the Civil Procedure Code, the Penal Procedure Code<sup>79</sup> does not contain many child specific provisions. Indeed, the Code does not provide for systematic child protection measures that could mitigate children's exposure to hardship during criminal proceedings. However, there are some provisions that can be used to protect children involved in criminal proceedings.

---

<sup>78</sup> *Ibidem*.

<sup>79</sup> Approved by Decree-law No. 13/2005, of the 1 of December.

For instance, under article 76 criminal proceedings can be closed to the public whenever deemed necessary to "protect human dignity" as well as in cases of sexual violence related crimes whenever the victim is under 18 years of age. This is a useful provision to ensure children's safety and right to privacy. However, this provision is inconsistent with the age of majority. By choosing to set the threshold at 18 it seems to implicitly refer to the age of majority. This might be an inconsistency due to the fact that the Penal Procedure Code was approved before the Civil Code. In any case, it can give rise to confusion and should therefore be amended or clarified.

Another provision that can be used as a child protection measure is article 230 of the Penal Procedure Code which provides for the recording of statements previous to the hearing. This measure can be applied in any situation where, for any justifiable reason, it is more convenient or appropriate for the victim or witness to testify before the hearing. It explicitly mentions that this measure can be used to collect the testimony of victims of sexual crimes.

While not child protection specific measures, the coercive measures<sup>80</sup> provided in the Penal Procedure Code, if appropriately applied could have a significant impact on the protection of child victims and witnesses. Coercive measures such as preventive detention and obligation to periodically appear before a judicial authority can be effective measures in protecting children from further harm and in monitoring suspects.

### *Law Against Domestic Violence*

The Law Against Domestic Violence<sup>81</sup> (LADV) aims to provide a legal framework that can allow for a more effective prosecution of domestic violence cases, as well as to prevent domestic violence and provide assistance to victims. Domestic violence is broadly defined by the LADV as any act committed by a family member against another family member, where there is a relationship of dependency (e.g. physical or economical) in the family relationship or where there is an intimate relationship between one person and the other, that results or could result in physical, sexual, economic or psychological injuries or suffering.<sup>82</sup> The LADV defines crimes of domestic violence by referring to specific crimes in the Penal Code<sup>83</sup>, ranging from less severe forms of physical violence to more serious cases such as rape and

---

<sup>80</sup> Articles 186 to 203 of the Penal Procedure Code.

<sup>81</sup> Law No. 7/2010, of the 7 of July.

<sup>82</sup> Article 2 of the LADV.

<sup>83</sup> The specific crimes are the following: mistreatment of a disabled person (art. 153), mistreatment of a spouse (art. 154), mistreatment of a minor (art. 155) and aggravated forms of these offences (art. 156); and homicide (art. 138), aggravated homicide (art. 139), termination of pregnancy (art. 141), simple assault (art. 145), serious assault (art. 146), torture (art. 167), sexual coercion (art. 171), rape (art. 172), child prostitution (art. 175), sexual abuse of a minor (art. 177), sexual acts with an adolescent (art. 178) and sexual abuse of a person incapable of resistance (art. 179).

homicide. These crimes, when perpetrated under the circumstances explained above, are categorised as domestic violence crimes under the LADV.

Most importantly, the LADV makes all crimes of domestic violence a public crime.<sup>84</sup> This means that the victim does not have to personally file a complaint for the crime to be investigated and prosecuted.<sup>85</sup> Considering that children are particularly vulnerable to domestic violence and that they are mostly dependent on adults, this is an important provision in guaranteeing that children who are victims of domestic violence can also access the formal justice system, as anyone can formally report a crime of domestic violence perpetrated against a child.

The LADV includes some important child specific provisions, namely:

- article 5 (paragraphs 2 to 5) on the need to obtain child victims' consent for any victim support intervention - for children above 16 years and for children between 12 and 16 whenever it is not possible to obtain consent from a legal guardian - and to hear and take into consideration younger (under 12 years) child victims' views on any such intervention;
- article 17 on the rights and duties of child victims and children of adult victims placed in shelters - these include the right to attend school and to be treated in a dignified way;
- article 22/a) on health facilities' responsibility to provide medical assistance and follow-up care to child victims of domestic violence crimes;
- article 23/b) on the social services' responsibility to provide specialised services for child victims of domestic violence crimes;
- article 23/e) on the social services' responsibility to facilitate, whenever deemed necessary, the removal of child victims to a safe place which is appropriate to their needs;

The LADV includes other important provisions for the realisation of child victims' right to access justice and to effective protection. These include domestic violence victims' right to legal aid (article 25), the social services responsibility to provide the judicial authorities with social reports (article 23/f), the possibility to apply coercive measures for the purpose of protecting the victims, such as removal of the defendant from the family home and prohibiting contact with the victim (article 37), provisions on sentencing of domestic violence perpetrators that take the victims' safety into account (article 38) and a duty of confidentiality

---

<sup>84</sup> Article 106/2 of the Penal Code provides a definition of *public crime*: "Public crimes are those the criminal prosecution of which does not depend on a complaint being filed."

<sup>85</sup> Article 36 of the LADV.

for all professionals dealing with domestic violence cases. Its provisions on sentencing set victims' security as a foremost concern when choosing the most appropriate penalty.<sup>86</sup>

Recent research conducted by JSMP on the obstacles to the implementation of the LADV<sup>87</sup> found that the LADV has not been effectively implemented to date. JSMP expressed concern that provisions on prosecuting crimes of domestic violence, sentencing of perpetrators, and on protecting and providing civil compensation to victims are not yet well understood by everyone involved in the formal justice system.<sup>88</sup> In particular, the research found that the suspension of the execution of sentences is currently not combined with additional orders to ensure victims' safety and to provide reparation which often makes the suspension inappropriate. Although the LADV represents a significant step forward in addressing the issue of gender based violence in Timor-Leste, including against children, JSMP concluded that further investment and efforts for the full implementation of its provisions are needed.

### *Law on Community Leaders and their Election*

The Law on Community Leaders and their Election<sup>89</sup> (LCLE) revoked previous legislation on the role and responsibilities of community leaders with the aim to provide a "*better definition of their functions and of the limits of community leadership structures' powers*".<sup>90</sup>

This law includes provisions that can have an influence on children's access to the formal justice system. In particular, it requires *chefes de suco* to "*request the intervention of the security forces (...) whenever a crime or any disturbance occurs*"<sup>91</sup> and both *chefes de suco* and *chefes de aldeia* to support and facilitate initiatives that aim to follow-up on and protect victims of domestic violence.<sup>92</sup> Under these provisions, community leaders are required to also report crimes perpetrated against or by children and to have an active role in the protection of child victims of domestic violence. Considering that community leaders are likely to be the first recognisable authority to know about the occurrence of a crime perpetrated against or by a child in their communities, it is very significant that community

---

<sup>86</sup> Article 38 provides that "1. *The court may replace the penalty of imprisonment with a fine as long as the prerequisites provided for in article 67 of the Criminal Code have been met, the security of the victim has been guaranteed, the perpetrator agrees to be subject to treatment or to follow-up by the victim support services, and such replacement is deemed advantageous for maintaining the unity of the family.* 2. *The defendant may further be sentenced to an accessory penalty of prohibition to maintain contact with the victim for a maximum period of 3 years, whenever it is considered that the application of the principal penalty is insufficient for preventing the repetition of identical acts.*"

<sup>87</sup> Judicial System Monitoring Programme (JSMP), *Law Against Domestic Violence - Obstacles to implementation three years on*, 2013. Available at [http://jsmp.tl/wp-content/uploads/2012/05/Part\\_Full.pdf](http://jsmp.tl/wp-content/uploads/2012/05/Part_Full.pdf)

<sup>88</sup> *Ibidem*, page 41.

<sup>89</sup> Law No. 3/2009, of the 8 of July.

<sup>90</sup> *Ibidem*, preamble.

<sup>91</sup> *Ibidem*, art. 11/2(f).

<sup>92</sup> *Ibidem*, art. 11/2(e) and art. 14(g).

leaders are bound by law to report crimes. It is also significant that domestic violence crimes are explicitly mentioned as children are particularly vulnerable to this kind of crimes. However, the LCLE lacks some clarity concerning which kind of crimes and disputes the community leaders are required to report to the authorities. Although, it is certain that they are required to report any public crime<sup>93</sup>, it would be useful to include a reference to the distinction between public and semi-public crimes.

Furthermore, the LCLE provides that *chefes de suco* can mediate themselves within the community *minor disputes or conflicts*. Confusion about what should be reported and what can be mediated can arise from these provisions as some crimes against children might be perceived as minor issues not to be reported (i.e. a public crime was qualified as a minor issued to be mediated). The LCLE should explicitly provide that community leaders cannot mediate public crimes.

### *Witness Protection Law*

The Law on Protection of Witnesses<sup>94</sup> sets out a framework for the protection of all witnesses in civil and criminal proceedings where their lives, physical or psychological integrity, freedom or assets of considerable value are jeopardized due to their contribution to ascertaining the proof of facts or to the discovery of the truth in judicial proceedings. The definition of witness is broad enough to include victims. The protection measures are applicable not only to the person in possession of the information, but also to their close family members. These provisions, if appropriately applied, have the potential to protect child victims and witnesses from pressure and threats when the defendant is a close relative for the duration of a trial.

As mentioned above, to date there has been no implementation of this law. It is striking to learn that a number of interviewed judicial actors were not aware of the existence of this law. Efforts to implement this law's provisions are urgent as they can make a significant difference in improving the safety and well-being of children involved in judicial cases.

### *Existing draft laws relevant to children's access to justice*

There have been a significant number of draft laws on child justice related issues over the years. Some of these drafts have existed for as long as ten years and have been subject to numerous revisions. The most significant draft laws on child justice related issues are the following:

---

<sup>93</sup> See footnotes 83 and 84.

<sup>94</sup> Law No. 2/2009, of the 6of May.

- Child Rights Code<sup>95</sup>
- Adoption Law<sup>96</sup>
- "Juvenile Justice Bill"<sup>97</sup>:
  - Juvenile Justice Law
  - Special Regime for Young Offenders

The reasons why these draft laws have never been passed are wide-ranging: from lack of political momentum to their poor quality and inadequacy in the local context. We will briefly look into some of the issues affecting these drafts.

The draft **Child Rights Code** has existed for almost a decade, having been revised multiple times. Some have pointed to this draft law as a solution to the legislative gap on child protection in Timor-Leste. However, this draft law has also received strong criticism over the years, which seems to be the main reason why it has never been approved into law. JSMP has mostly agreed with the criticism directed at this draft. JSMP also sees this draft as generally lacking concrete and implementable norms. It is more of a collection of general statements repeating principles of international law relating to children's rights that have already been integrated in the Timorese legal system. It contains some provisions defining important institutional responsibilities in child protection but it does not define which institution bears these responsibilities. In fact this draft does not specify which institutions are responsible for child protection, what their mandates are, how they should interact and coordinate their roles and what procedures they should follow to put into practice general child protection principles. In JSMP's view, this draft lacks any real utility and is more akin to a policy than a law.

Regarding the draft **Adoption Law**, as far as JSMP could gather, with the entry into force of the Civil Code in 2011 this draft was dropped as its contents were partly included in the Civil Code. Although this is true, as noted above the Civil Code only includes general norms on adoption but no concrete rules for the implementation of these general provisions. The draft Adoption Law, besides covering these general provisions, also specified institutions, mandates, and procedures that would be put into practice, compared to the Civil Code's

---

<sup>95</sup> The draft analysed for the purpose of this research is dated from October 2012 and is available in the MoJ's website for public consultation. [http://www.mj.gov.tl/files/dnajl\\_files/MJ\\_Codigo\\_dos\\_Direitos\\_da\\_Crianca\\_Out2012.pdf](http://www.mj.gov.tl/files/dnajl_files/MJ_Codigo_dos_Direitos_da_Crianca_Out2012.pdf) (last accessed 9/4/2014)

<sup>96</sup> The draft analysed for the purpose of this research is dated from February 2009.

<sup>97</sup> The drafts analysed for the purpose of this research are dated from October 2012 and were circulated during a Technical Workshop to consult key stakeholders on the Juvenile Justice Law and Special Regime for Youth Offenders that took place on March 5-6, 2013. These drafts were still available in the MoJ's website for public consultation in April 2014 <http://www.mj.gov.tl/?q=node/465> (last accessed 9/4/2014).

more general provisions. Without such rules, the legislative gap on adoption still persists which ultimately has a negative impact on the further implementation of children's rights in the administration of justice.

The two draft laws on juvenile justice – the **Juvenile Justice Law** and the **Special Regime for Young Offenders** – have been subjected to a number of revisions over the years and have also received considerable criticism. The highly complex and intricate system proposed by these laws, which would be inappropriate for the Timorese context, and poor harmonisation with existing legislation, have often been identified as some of their main shortcomings. Indeed, the proposed system does not seem to take into account the limited capacity of the justice sector, the limited availability of human resources, or the Timorese cultural context, and does not make use of existing structures. Other shortcomings include lack of presumption of innocence guarantees and *de facto* detention with few legal remedies. JSMP believes that further and deeper revision of these drafts has not been among one of the Government's priorities which has resulted in the persistence of this gap.

### *Main gaps in legislation*

#### **Lack of Legislation on Children in Conflict with the Law**

This is indeed one of the most serious legislative gaps in the Timorese child justice legal framework. This gap means that there is a complete legal void when it comes to children in conflict with the law - both those criminally responsible (juvenile justice) and those not yet criminally responsible - which leaves judicial authorities with no legal tools to deal with cases involving children as perpetrators. Consequently, children in conflict with the law are unprotected and vulnerable to discretionary treatment and *ad hoc* solutions that might violate their rights.<sup>98</sup>

#### **Lack of Child Protection Legislation**

The lack of legislation containing child protection principles, specifying competent institutions, establishing mandates and creating procedures and institutional coordination lines for the protection of children at risk is a major obstacle to the respect of children's right to access justice. Children are an extremely vulnerable group in society as they cannot protect themselves and defend their rights alone. Currently, the MSS's organic law provides that it is the responsible government entity for the development of a child protection system in collaboration with other relevant entities.<sup>99</sup> However, important questions about the MSS's

---

<sup>98</sup> The consequences of this legal void are addressed in more detail in section 3.2.

<sup>99</sup> Article 10 of Decree-law No. 47/2012 of the 5<sup>th</sup> of December.

mandate, its coordination with other ministries and with judicial institutions - police, public prosecutor, courts, etc. - and procedures on child protection are not addressed. Again, this gap leaves a legal void that compromises children's rights in general and, in particular, children's right to access formal justice.

A new draft Child Protection Law is currently being developed by the MSS. JSMP hopes that there can soon be significant consultations with relevant partners that can result in a strong draft law able to fill this void as soon as possible.

### **Lack of Civil Registry Law**

The lack of a Civil Registry Code that regulates in a systematic way the official registration of legal facts such as births, marriages, divorces, deaths, etc., is an obstacle to the existence of useful, correct, precise and legally valid information on matters such as parentage and inheritance.<sup>100</sup> The lack of such information can be an overwhelming obstacle for children accessing the formal justice system, both in criminal and civil cases. For example, a child that has neither a birth certificate or any legal proof of his parents' marriage will face many difficulties in gaining the right to receive any pension to which he/she would be entitled as a child of a veteran. Another example where the availability of accurate birth certificates is of great importance are criminal cases involving children where the child's age is crucial to determine the type of crime - in cases of child victims - or the applicable penalty - in cases of children in conflict with the law.

A new draft Civil Registry Code is currently being developed by the Ministry of Justice. JSMP hopes that such a draft can enter into force as soon as possible after comprehensive consultation.

#### **Key findings about the legal framework relevant to children's access to justice:**

- Lack of laws regulating substantive norms impedes implementation;
- General poor understanding and application of important laws, such as the Civil Code;
- Gaps in legislation about important child justice issues such as juvenile justice and child protection;
- Lack of translation of legislation into Tetum and lack of dissemination;
- Existing draft laws lack quality and are often not well adapted to the Timor-Leste's context.

<sup>100</sup> Currently, civil registry is still regulated by UNTAET Regulation No. 2001/3 on the Establishment of the Central Civil Registry for East Timor.

## 2.3. The Child Protection System

Legal provisions and guarantees of children's access to justice are meaningless without functioning structures that can apply and enforce them. Authorities that can effectively identify, assess and refer situations of child abuse, children at risk or in conflict with the law to the justice system are just as important as a legal framework that protects children's right to access justice.

### *A De Facto System*

With the exception of the Penal Procedure Code's provisions discussed in the previous section, there are currently very few formal procedures for child protection established by law or regulation. In the absence of clear mandates and procedures, this research has found that official institutions tend to treat judicial cases involving children quite informally and often inconsistently. Despite this, it is possible to identify some general trends that constitute a *de facto* child protection system.

The chart below illustrates the dynamics between the main actors in child protection from the moment a case is reported. The arrows between these actors indicate reporting, referral and communication flows. The dotted and solid lines intend to highlight weaker and stronger collaboration and communication between them as well as frequency of communication.

The chart roughly maps the current *de facto* child protection system and includes its main actors:

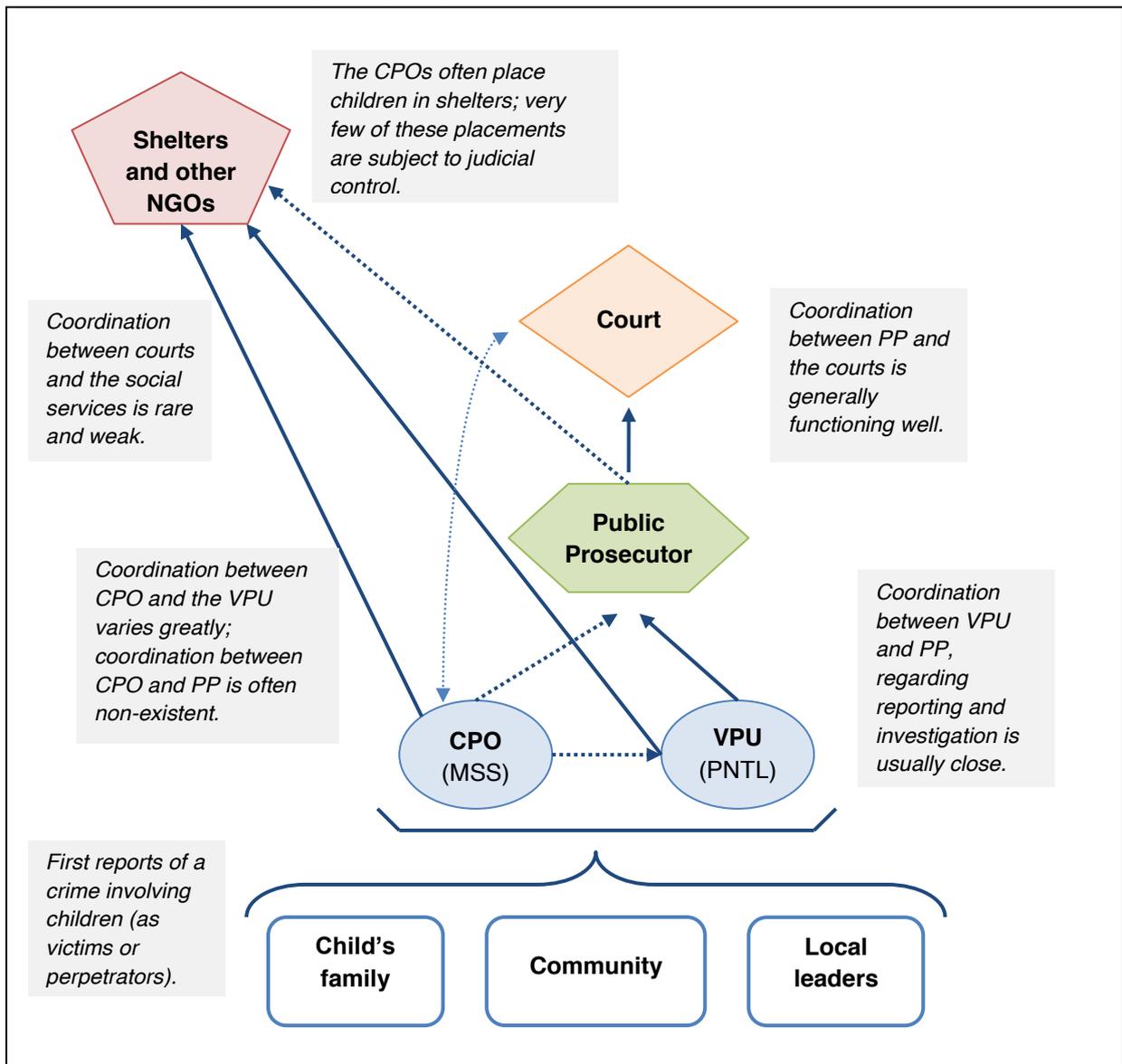
- PNTL's Vulnerable Person's Units (VPU) - this unit of the national police force is an informal branch of the Criminal Investigation Department focused on dealing with cases involving people from particularly vulnerable groups of society, such as women, children and the elderly;
- MSS's Child Protection Officers<sup>101</sup> (CPO) - these officers should operate as social workers specialised in child protection; however, they have no official mandate under the law and are public servants by background with few social work skills;
- Public prosecutors - among other functions, public prosecutors represent children in court (both in criminal and civil proceedings) and protect their best interests; they lead the investigation and prosecution of public crimes, including those perpetrated against children;

---

<sup>101</sup> There are currently two (2) CPOs deployed in each district (total 26); this distribution of CPOs is not based on population density.

- Courts - until there are specialised courts for child justice matters, cases involving child victims and children in conflict with law are dealt with by the general courts of law;
- Shelters and other NGOs - there is a wide range of private organisations - religious institutions, local and international NGOs - that actively participate in the child protection system providing services such as safe housing for children, legal aid, medical-forensic examinations, and related services.

FIGURE 2 - DE FACTO CHILD PROTECTION SYSTEM IN TIMOR-LESTE



- Stronger and/or more common collaboration
- Weaker and/or variable collaboration
- Very weak and/or rare collaboration

In addition to those included in the chart, there are also other actors and components of this *de facto* system, namely:

- Public defenders - among other responsibilities, public defenders provide legal representation to anyone in need of those services and represent minors whenever the public prosecutors cannot provide that service<sup>102</sup>; JSMP did not monitor any court case where a child was represented by a public defender and has found during this research that, in general, their role in child protection is currently marginal;
- District child protection networks - these networks act as a referral platform at the district level for cases of children at risk and usually include as participants the district VPU and CPO as well as local shelters and NGOs working in the district;
- Social Animator - para-social workers at the community level that serve as a link between communities and the district MSS delegations.

As noted above, there are no official procedures or regulations on child protection. However, this is not the sole contributing factor to the *de facto* nature of the current child protection system. Indeed, the functions, responsibilities and powers of some of the actors involved in child protection are also not formally defined and established. Specifically, the VPUs, the CPOs, the Social Animators and the district child protection networks are hardly mentioned in the law.<sup>103</sup> Their mandates, responsibilities and reach of their powers are not formally defined. This means that important questions such as "do the CPOs have the authority to remove children from their families and place them in shelters?", "to whom do the VPU officers hierarchically respond to first: the National VPU Commander or the District PNTL Commander?" and "who should be involved in the district child protection networks?" remain unanswered. With only their terms of reference to guide them, these officers are uncertain of the scope of their role, responsibilities, powers and duties.

Moreover, not only are their mandates undefined, but their very existence has not been legally established. Without their existence and mandates established in law, it is difficult to strengthen their roles in child protection.

This informality results in a **great diversity of practices, procedures and approaches to child protection** which ultimately threatens children's right to access a justice system that offers everyone a fair and equal treatment and is well adapted to their evolving capacities.

---

<sup>102</sup> See article 2 of Decree-law No. 38/2008 of the 29<sup>th</sup> of October.

<sup>103</sup> The only references can be found in the following documents: *Diploma Ministerial* No. 26/2012, of the 19<sup>th</sup> of September on the "*Organisation and Functioning of the Social Welfare Services*", which refers to the CPOs and to the Social Animators as having a status equivalent to that of social workers; and the Joint *Diploma Ministerial* No. 24/2012, of the 19<sup>th</sup> of September on the "*Organic Structure of the MSS's Territorial Delegations*" which states that it is the responsibility of these delegations to organise the meetings of the district child protection networks.

As was mentioned above, the different arrows (dotted and full lines) linking the main actors in the above chart (Figure 2) also aim to illustrate:

- the diversity in procedures and practices in child protection; and that
- functional coordination and collaboration between some of the main actors in child protection does not always exist and that reporting obligations are often disregarded.<sup>104</sup>

If in one district the CPO always contacts and works in close collaboration with the district public prosecutor after learning of a public crime perpetrated against a child. In a neighbouring district, the public prosecutor might not even be aware of the CPO's existence.

One major obstacle to open communication and strong collaboration is social services' lack of knowledge about the formal justice system on the one hand, and the judicial authorities' lack of understanding of the importance of social welfare interventions in cases involving children on the other.

However, it is difficult to see how judicial actors can be persuaded to, for instance, involve CPOs in child protection related judicial interventions, such as removing children at risk from their families or providing support to children throughout judicial proceedings, when their existence and mandate is not recognised by the legal system.

Overall, how well the *de facto* child protection system works in each district and the degree to which children's right to access justice is protected, greatly depends on the individual qualities and initiative of the people holding the relevant positions and on the personal relationships between them.

### *Lack of a multidisciplinary approach*

Generally, there is no multidisciplinary approach to dealing with cases of children at risk, including child victims and children in conflict with the law. There is a lack of awareness of

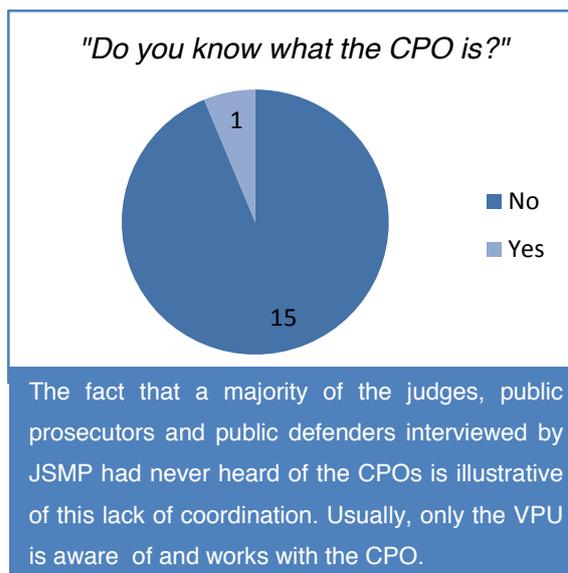


FIGURE 3 - KNOWLEDGE OF CPO BY JUDICIAL ACTORS

The fact that a majority of the judges, public prosecutors and public defenders interviewed by JSMP had never heard of the CPOs is illustrative of this lack of coordination. Usually, only the VPU is aware of and works with the CPO.

<sup>104</sup> For instance, this is often the case with the obligation to report and process public crimes through the formal justice system which, considering information gathered through interviews, particularly with NGOs working in child protection, is frequently disregarded.

the complex issues that have led a child to be either a victim or the perpetrator of a crime. This is both a consequence and a cause of the lack of collaboration and interconnectivity between actors in child protection. There is a lack of sensitivity towards the fact that children (more so than adults) have special needs - such as security, adult guidance, protection from hardship, legal representation, etc. - in order to effectively access justice. In addition, social services often do not understand the importance of involving judicial authorities in order to ensure that children are able to obtain a fair resolution in their judicial matter which respects their rights and needs.

Consequently, the responses given to such cases fail to address their complexity and, depending on who first hears about the incident, are limited to either a law suit, removal of children from the families and placement in shelters or alternative care institutions or some financial help. That is, children in need of protection receive either a judicial response or a social welfare response, but are rarely offered the benefits that would come from combining the two.

### *Preference for institutionalising children*

Although definite statistics are unavailable, court monitoring and interviews have shown that institutionalising children is currently the preferred formal child protection measure for all children at risk, including child victims of crimes and children in conflict with the law. As can also be seen from the chart mapping of the *de facto* child protection system (Figure 1), several actors take the initiative to place these children in shelters and other out of home care institutions. The removal of children from their families and their subsequent placement in shelters is done in a very informal manner. Through court monitoring and interviews, JSMP has found that other protection measures such as placement with relatives, or requesting courts to hand down coercive measures to suspects are rarely even considered. Currently, due to a combination of few options and lack of knowledge about appropriateness of child protection measures, authorities - usually either the CPO or the VPU - unilaterally and informally decide to remove children and to place them in shelters and other similar institutions indefinitely. The public prosecutors are often not informed about these measures or, when they are informed, refuse to become involved due to their poor understanding of their own duties under the law<sup>105</sup>, as they believe they are not required to be involved. This means that there is **no judicial control** of the removal of children. Furthermore, there is

---

<sup>105</sup> For instance, article 1800 of the Civil Code provides that "*When the safety, health, ethical training or education of a minor child are in danger and it is not a case of inhibition of the exercise of parental authority, the court may, upon request from the Office of the Public Prosecutor or any other person indicated in paragraph 1 of article 1796, order appropriate measures, namely entrust him or her to the third person or to an educational or welfare institution.*" The Civil Code's article 1797 gives the public prosecutors the power to initiate procedures on the removal and limitation of parental authority.

usually **no consistent monitoring and follow-up** of the children's welfare by the authorities that decided to place them in alternative care institutions in the first place. This condemns an already vulnerable child to risks of further abuse and neglect.

Since some of the institutions in which children are placed receive funding from the MSS, MSS officials claim that responsibility for monitoring the children's welfare rests with those organisations which are obliged to report directly to the MSS. However, it is not clear that there are any formal agreements delegating some of MSS's responsibilities for child protection to private organisations. Notwithstanding any agreements, while the MSS can delegate the execution of some of its functions<sup>106</sup> (namely, to develop a child protection system<sup>107</sup>), ultimately it is MSS's responsibility to ensure that children are adequately treated, to monitor their welfare and to keep records of the cases handled.

### *Low capacity and understaffing*

Timor-Leste has a chronic problem of understaffing and a scarcity of qualified human resources in the public sector. This problem is also evident in the institutions involved in child protection that should protect children's right to access justice. This problem manifests itself in:

- The **difficulty in obtaining social reports from the MSS** - all of the judicial officers interviewed for this report<sup>108</sup> complained that it was extremely difficult to get reports on children's situations and backgrounds. When asked about this issue, all MSS officers pointed out that this was a result of the lack of qualified staff to draft social reports, to understand judicial authorities' requests<sup>109</sup> and action them as appropriate.
- The **regular rotation of VPU officers** - after having received training on issues such as child protection, and child sensitive interview and investigation techniques, VPU officers can be arbitrarily rotated to different PNTL units, such as the traffic unit<sup>110</sup>. These arbitrary rotations fail to recognise the value of both the training received and the experience acquired by these officers<sup>111</sup>, which ultimately hampers the existence

---

<sup>106</sup> See the provisions regarding delegation of powers by public entities contained in Decree-Law No. 32/2008, of the 27<sup>th</sup> of August on "Administrative Procedure".

<sup>107</sup> Article 10 of the Decree-Law No. 47/2012, of the 5<sup>th</sup> of December on the "Organic Structure of the Ministry of Social Solidarity".

<sup>108</sup> Interviews conducted from September 2013 through April 2014.

<sup>109</sup> Such requests are made through official letters from the courts. The MSS is bound by law to collaborate with the courts by providing social reports or any other requested information; see article 10(2/d) of Decree-law No. 47/2012, of the 5<sup>th</sup> of December.

<sup>110</sup> Very often the national VPU office is not even informed about these rotations.

<sup>111</sup> However, in Baucau the PNTL Commander recognised the special role of the VPU and the value of the training the officers received, and issued an internal order some years ago impeding the rotation of VPU officers to other units.

of a child friendly police force that can better guarantee children's right to access justice.

- The **lack of prosecutors and judges specialised in child justice** - generally, court actors have limited knowledge of child sensitive justice concepts which results in there being little difference between the way a case involving adults and a case involving children is treated<sup>112</sup>;
- **Poor understanding of the law** - this is all-too common amongst judicial actors and is reflected in a number of poor outcomes for children including failure to intervene when required by law, flawed prosecution, and failure to request and/or apply protection measures, amongst others.

This issue will be further addressed in the next section on the accessibility of the formal justice system.

### *Dependence on private organisations*

The gaps left by weak inter-institutional cooperation, low capacity and understaffing are partially filled by private organisations such as religious institutions and NGOs. The current *de facto* child protection system greatly depends on these organisations for the provision of services such as shelter for children at risk, legal aid, medical care, transportation and forensics. Some institutions and NGOs receive financial support from the government, but not all, and not in a consistent way. In all districts the dependence on private organisations is so marked that, without them, there would be virtually no child protection system.

#### **Summary of the existing child protection system's main features:**

- **Informality** - there are no official procedures and the actors involved do not have clear, formally defined roles; the current system is a *de facto* one that greatly varies from district to district.
- **Lack of a multidisciplinary approach**- little collaboration and coordination between the official authorities leads to a narrow approach to the complexity of issues usually present in judicial cases involving children.
- **Preference for institutionalising children** - removal of children from families and placement in shelters or alternative care institutions is the preferred protection measure; other protection measures are usually not considered.

---

<sup>112</sup> For instance, the resort to cross examining child victims with suspects; example Case No.178//2012/TDD.

- **Low capacity and understaffing** - lack of qualified staff affects all the components of the child protection system from the police force to the courts.
- **Dependence on private organisations** - religious institutions and NGOs attempt to fill the gaps left by weak inter-institutional cooperation, low capacity, understaffing and a general lack of resources.

## 2.4. Accessibility of the Formal Justice System

As with its legislative framework, Timor-Leste's formal justice system is a work in progress. It lacks resources and infrastructure, in particular adequately qualified human resources, and a significant part of the population is still unfamiliar with the formal justice system.<sup>113</sup>

*"Access to courts is guaranteed to all for the defence of their legally protected rights and interests"*

Article 26 of DRTL Constitution

In 2010 the Government approved a Strategic Plan for the Justice Sector<sup>114</sup> (covering 2010 to 2030) that recognised many of the justice sector's persistent shortcomings and put forward a number of valuable measures and strategies to tackle them. This plan included "access to justice" as one of its thematic areas. It recognised that *"customary mechanisms are often the only accessible justice system to most people, but due to its lack of regulation there is the risk that these practices might contradict formal laws and human rights, especially the rights of women and children."*

Indeed, some of the main obstacles to access to justice in Timor-Leste are:

- Lack of information about formal law and the formal justice system; and
- A marked preference for customary justice mechanisms as the formal justice system is perceived as costly, time consuming and ineffective.<sup>115</sup>

When it comes to how accessible the formal justice system is to children, these issues are exacerbated by a weak child protection system, gaps in legislation concerning child justice, lack of child appropriate judicial facilities (e.g. appropriate rehabilitation facilities for child offenders), lack of understanding of children's special characteristics (e.g. not being able to understand that child victims' reactions are usually not the same as those of adult victims) and lack of judicial officers specialised in child justice.

<sup>113</sup> The Asia Foundation, "Timor-Leste Law & Justice Survey 2013", 2014, Page 18.

<sup>114</sup> Approved by Government Resolution No. 30/2010 on 2 June 2010.

<sup>115</sup> This perception was repeatedly referred to by interviewees during the research for this report.

The Government's Strategic Plan includes measures to make the formal justice system more accessible to children<sup>116</sup>, however, its implementation has so far been limited. For instance, under its objective 13.1.1. on the "*implementation of children's rights as set out in the CRC and the DRTL Constitution*", the Strategic Plan outlines a number of activities, namely "*to ensure the National Commission on the Rights of the Child monitors children's rights and the rights of young offenders*", "*to create special centres for children and youth in conflict with the law*" and "*to ensure the participation of youth in crime prevention programmes*". The timeframe provided in the Strategic Plan for the implementation of these activities is unclear<sup>117</sup>, however, as far as JSMP is aware, they have mostly not yet been carried out.

### *The police force*

The PNTL has a reasonable coverage of the national territory and is therefore often the first formal justice institution with which people have contact. This is also true for children who have been victims or perpetrators of a crime. In such cases, children should be referred to the local VPU.

The VPUs are the police units allocated to handle cases involving people from vulnerable groups of society, including children. These units have an office in all district capitals and are staffed with 2 to 3 officers. The central district offices deploy one VPU officer to the sub-districts to make the VPU more accessible to rural communities. The sub-district VPU officers should report any cases involving children to the central district office. However, this



FIGURE 4 - CHILD FRIENDLY INTERVIEW ROOM - ERMERA VPU

distribution is not based on population density, which means that the number of deployed VPU officers in Dili is not considerably larger than less populated districts.

The majority of VPU officers interviewed by JSMP showed a fair understanding of children's special needs, and of child friendly interview techniques and procedures. In addition, some of the VPU district offices visited by JSMP were equipped with child friendly spaces where children can be interviewed and stay during the night in emergency circumstances. The VPU seems to be the most likely authority to receive initial information about crimes involving

---

<sup>116</sup> See, for instance, sections 13.1 and 13.2 of Goal 5 on the protection of children as a vulnerable group in the justice sector.

<sup>117</sup> The timeframe provided is per objective, not per activity.

children from other PNTL officers, CPOs and sometimes directly from the communities, when they are reported.

Despite this, there are a number of shortcomings regarding the current performance of the VPUs' duties, namely:

- Poor investigation - in addition to gaps in knowledge about investigation techniques and procedures, the VPU does not have enough resources to conduct thorough and timely investigations, i.e. no forensic examination tools;
- Incomplete, inconsistent and incoherent data collection - crime classification does not always follow the Penal Code, information about cases is not always recorded in a systematic way and there is no standard data collection format<sup>118</sup>;
- Frequent rotation of VPU officers - this means that resources invested in training to build officers' capacity in dealing with vulnerable victims, including children, are wasted;
- Poor understanding amongst officers of their own powers and duties - e.g. officers do not understand under which circumstances they should and should not remove a child at risk.
- Poor coordination with the national VPU command.

Some of these shortcomings are related to the fact that the VPU does not formally exist as a unit within the PNTL. Without legal status, the VPU cannot directly be allocated State budget funds and other resources, there can be no official nominations for VPU command positions and there can be no official hierarchy within the VPU at the national level (currently, each district VPU is legally required to report to the district general command).

### *The judiciary*

There are currently four District Courts - Dili, Baucau, Suai and Oecusse – each covering a number of districts in their jurisdictions (see diagram below).

---

<sup>118</sup> Recently, an Integrated Information Management System (IIMS) was created with the support of Australian Aid to allow judicial institutions, including the PNTL, to better manage their information and to better coordinate the flow of information among and between each institution. During research for this report, all statistical data provided by judicial institutions followed different formats and each institution gathered different forms of data. Senior officials have informed JSMP that their use of IIMS is limited by lack of reliable internet connections.



FIGURE 5 - DISTRICT COURTS' JURISDICTIONS

The other judicial services, such as the public prosecutors and the public defenders, are also located in the same towns as the district courts.

Taking into account the lack of public transport in large areas of the country and the poor condition of roads, the distance to the nearest courts and other judicial institutions may be an overwhelming obstacle for most people living in rural areas.

<b>Judges</b>	<ul style="list-style-type: none"> <li>– 17 judges</li> <li>– 5 trainee judges</li> <li>– 5 international judges</li> </ul>
<b>Public Prosecutors</b>	<ul style="list-style-type: none"> <li>– 17 public prosecutors<sup>119</sup></li> <li>– 5 trainee public prosecutors</li> <li>– 3 international public prosecutors</li> </ul>
<b>Public Defenders</b>	<ul style="list-style-type: none"> <li>– 16 public defenders</li> <li>– 4 trainee public defenders</li> <li>– 1 international public defenders</li> </ul>

FIGURE 6 - BREAKDOWN OF JUDICIAL ACTORS IN TIMOR-LESTE (APRIL 2014)

The district courts, public prosecutors and public defenders all have insufficient qualified human resources which leads to significant delays. Delays are also caused by the low quality of investigations carried out by the PNTL, meaning that prosecutors are often required to repeat investigations.

<sup>119</sup> In the Dili District Court's jurisdiction, there has been a specific public prosecutor allocated to civil cases involving women and children.

The scarcity of quality interpreters is often also an obstacle to access to formal justice. This is an issue not only regarding Portuguese-Tetum translation, but also concerning translation of other local languages. For instance, JSMP monitoring has found that delays in cases in the Baucau District Court are sometimes due to the lack of Tetum-Fataluku interpreters. This issue also affects children's access to the formal justice system.

When it comes to guaranteeing children's access to justice, accessibility is not limited to the number of judicial facilities and their geographic location. Judicial facilities also need to be well-adapted to children's special needs and characteristics. For instance, waiting areas that are safe and appropriate for children are necessary to guarantee that children are able to participate in judicial proceedings. A child that feels threatened by the presence of a perpetrator in the same waiting area before a hearing or interview is unlikely to be able to fully participate in judicial proceedings. Currently, only the Suai District Court is equipped with such child friendly facilities but they are seldom used as a way to protect children.

### *National Human Rights Institutions*

There is one independent national human rights institution set up to protect and monitor human rights in Timor-Leste - the ***Provedoria dos Direitos Humanos e Justiça***<sup>120</sup> (PDHJ). According to the Constitution, it should receive complaints from citizens against State institutions, look into credible cases and make recommendations to those institutions about how they might improve their processes to avoid future complaints. The PDHJ is responsible for ensuring that vulnerable groups, including children, benefit from its services.<sup>121</sup> Currently the PDHJ focuses its work on investigating complaints of human rights violations, making recommendations to the state institutions against which the complaints were made, providing training to public servants, and disseminating human rights information to the general population.<sup>122</sup>

Despite not being a true national human rights institution, the **National Commission for the Rights of the Child** (NCRC) has the potential to become one such institution specialised in children's rights. Currently, it cannot be seen as a national human rights institution as it lacks autonomy, and has weak legal and political status.<sup>123</sup> While the NCRC continues to depend financially and administratively on the Ministry of Justice<sup>124</sup> it cannot serve as an independent watchdog for the respect and realisation of children's rights in Timor-Leste. So

---

<sup>120</sup> Article 27 of the Constitution.

<sup>121</sup> Article 8(1) of the PDHJ's statutes (Law No. 7/2004 of 5 May).

<sup>122</sup> Information provided by the PDHJ's Directorate for Human Rights in March 2014.

<sup>123</sup> It was established by a ministerial dispatch in 2008 (Dispatch No 15/A/GMJ/V/2008).

<sup>124</sup> Under the MoJ's Organic Law (Decree-Law No. 02/2013, of the 6th March) the NCRC has autonomy regarding all technical aspects of its work but is dependent on the MoJ in what concerns all other aspects, much like the Legal Training Centre.

far, having an unclear legal status, little access to State budget<sup>125</sup> and being critically understaffed (currently it has only three (3) permanent staff members, all trained in public administration)<sup>126</sup> the NCRC's activities have been mainly limited to awareness raising activities on children's rights. Due to its fragile standing, JSMP is concerned that the NCRC's very existence might be threatened, which would mean the loss of an opportunity to build a national institution dedicated to the promotion and monitoring of children's rights in Timor-Leste.

### *Birth registration services*

Without official documents to prove his/her identity, a child cannot access the formal justice system. As mentioned above, the births of a large percentage of children in Timor-Leste have not been registered. Indeed, most of the judicial actors interviewed by JSMP had already encountered problems caused by lack of, or flawed, birth registration in cases involving children. The absence of appropriate birth registration documents gives rise to issues related to the inability to prove one's age and parentage. Further, even when these issues are identified by judicial actors, obtaining or amending a birth registration certificate is not always an easy task as there are no standard procedures. Currently, there are birth registration services at most health facilities and there have been programmes to train nurses, midwives and local leaders in child registration.<sup>127</sup> However, more public awareness raising campaigns and dedicated legislation are needed to tackle this issue.

#### **Summary of the main issues affecting accessibility of the formal justice system:**

- **A wide jurisdiction**
- **Insufficient qualified human resources** - insufficient qualified staff to cover the needs of criminal investigation, prosecution, legal aid, trial of cases, translation/interpretation and protection of children involved in judicial cases.
- **Insufficient financial and material resources** - insufficient allocation of funds, transport and criminal investigation resources hamper the prompt processing of cases.
- **Insufficient child sensitive spaces** - this has been pointed out as an issue mostly in the case of courts.
- Significant incidence of **lack of or flawed birth registration**

<sup>125</sup> The NCRC has mainly depended on UNICEF funding. The 2014 State budget allocated a total USD 117.000 to the NCRC.

<sup>126</sup> Information provided by NCRC in April 2014.

<sup>127</sup> See Dispatch No. 16/2011/IVGC/MS about a Memorandum of Understanding between the Ministries of Justice, Health, Education and Sports, religious institutions and UNICEF on birth registration services.

### 3. Accessing the Formal Justice System

Children may come into contact with the justice system in a variety of situations: as victims, defendants, witnesses, plaintiffs and affected parties. In Timor-Leste, most children that come into contact with the justice system do so as victims of a crime. However, it is suspected that the number of child victims that come into contact with the justice system does not reflect the real incidence of crimes perpetrated against children.

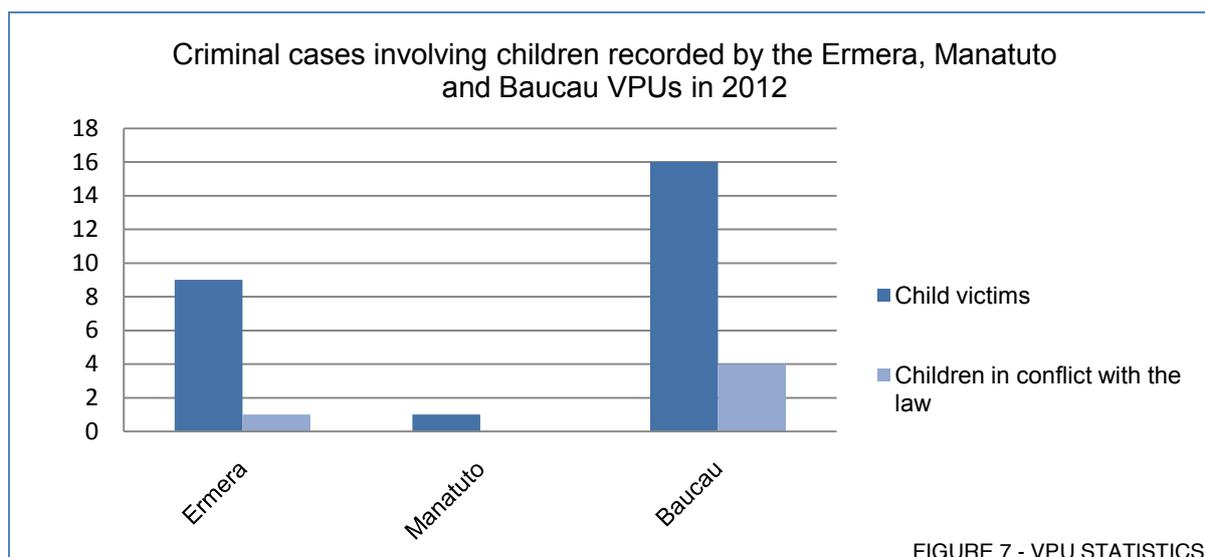


FIGURE 7 - VPU STATISTICS

*In the VPU statistics gathered by JSMP, the majority of cases registered by the VPUs are of domestic violence against women. Cases involving children are a minority. Of these, there were few registered cases of children in conflict with the law; the majority were cases involving child victims. However, most VPUs talked about having come across a significant number of criminal cases involving minors as perpetrators in the past.*

\* This chart displays data taken from the Ermera, Manatuto and Baucau VPUs' general statistics obtained by JSMP between September and November 2013. The decision to use statistics from these particular VPUs was based on the fact that their statistics were the most complete and coherent; other VPUs provided statistics that were too incomplete and flawed.

Situations of children in conflict with the law are more often resolved through traditional justice mechanisms and of these, many are never registered with the police. Interviewees responded that to their knowledge less serious crimes committed by children are usually dealt with within the communities. Furthermore, even when these cases do get reported to the authorities and are processed, they are unlikely to be brought before a court due to the lack of specific legislation governing children in conflict with the law. It is striking that during approximately one year of monitoring, JSMP did not identify any court case involving a child as a perpetrator of a crime.

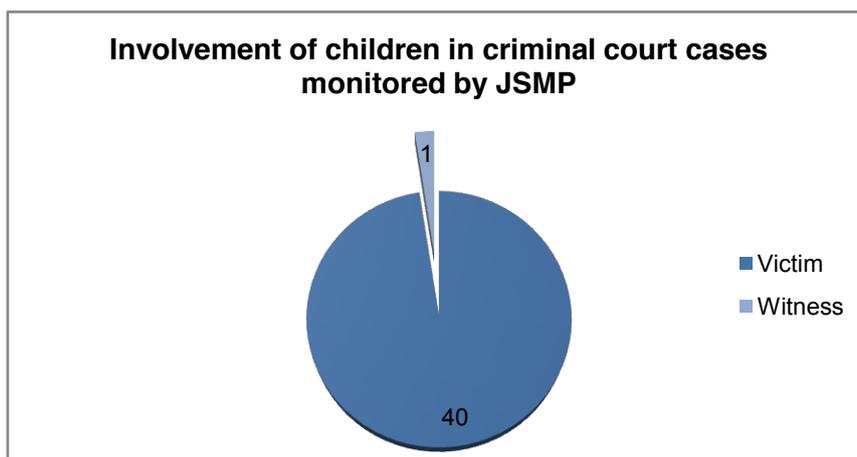


FIGURE 8 - JSMP COURT MONITORING STATISTICS - MARCH 2013 TO APRIL 2014

As can be seen in the above chart, it is also uncommon for children to be involved in judicial cases as witnesses. It is likely that this is due to a perception that children are unreliable witnesses as Timorese society tends to follow an adult centred culture. However, specific research on how Timorese society perceives children as witnesses would be needed to confirm this.

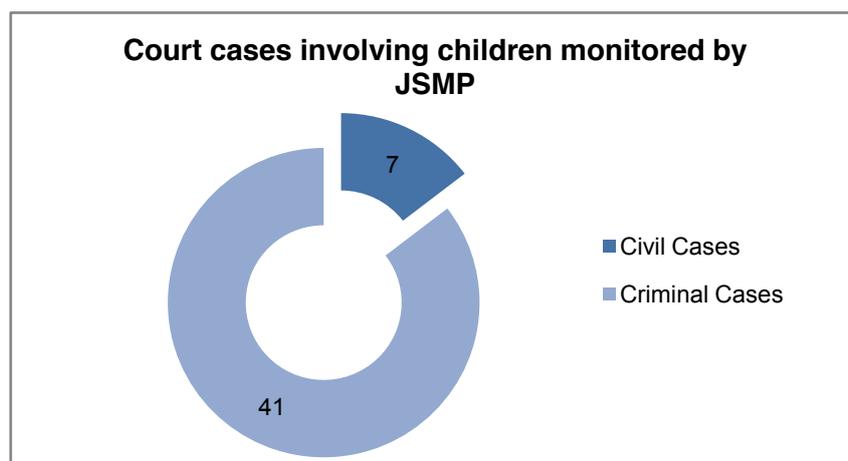


FIGURE 9 - JSMP COURT MONITORING STATISTICS - MARCH 2013 TO APRIL 2014

JSMP's court monitoring statistics suggest that civil cases involving children are far less frequent than criminal cases. However, unlike criminal cases, most civil cases involving children never reach a public hearing as that would only happen if mediation by the judge fails. Civil proceedings involving children are mostly related to family disputes, such as regulation of parenting arrangements, child support, and recognition of paternity amongst others. In such cases, civil procedure favours mediation and provides additional protection to privacy.<sup>128</sup> JSMP is only able to monitor cases where mediation fails and go on to trial and,

<sup>128</sup> See, for instance, art. 833 of the Civil Procedure Code on the procedure to be followed in child support/alimony cases that makes mediation a compulsory step before any public hearing.

therefore, to a hearing. This means that the disparity between the number of criminal and civil cases involving children is not as great as it would seem when judging only by public hearings.<sup>129</sup>

### 3.1. Child Victims

This section will explore how accessible and child friendly the formal justice system is towards child victims throughout its different stages, in comparison with internationally accepted standards.<sup>130</sup> First, we will consider child victims and the types of crimes they have experienced.

#### *Who are the child victims?*

Most child victims involved in criminal cases that reach the Timorese courts are **adolescent girls who have suffered sexual violence**. However, JSMP has also monitored a high incidence of cases reaching the courts of younger children (as young as 2 years old) – as victims of sexual abuse.

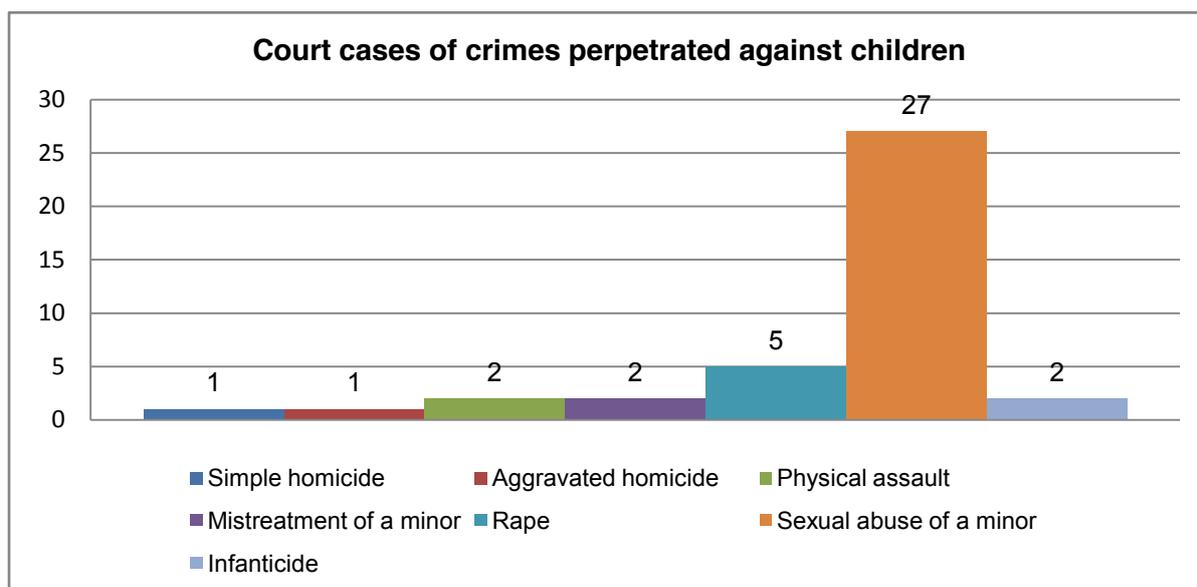


FIGURE 10 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - COURT CASES OF CRIMES PERPETRATED AGAINST CHILDREN

<sup>129</sup> The matter of children involved in civil proceedings will be discussed further in section 3.3.

<sup>130</sup> UN ECOSOC, "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime", ECOSOC Resolution 2005/20 of 22 July 2005.

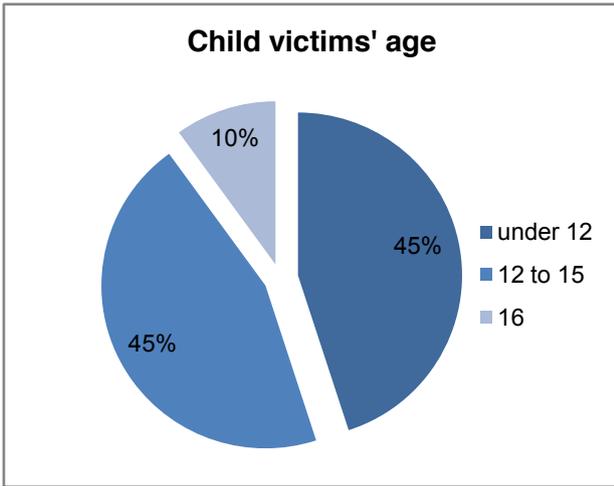


FIGURE 11 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - CHILD VICTIMS' AGE IN CRIMINAL COURT CASES

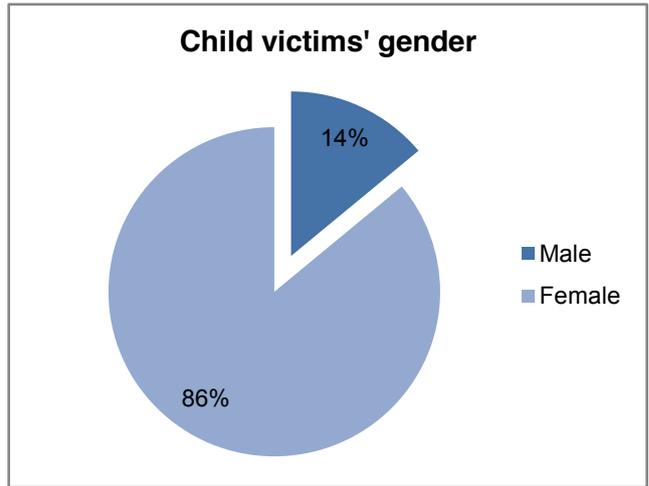


FIGURE 12 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - CHILD VICTIMS' GENDER IN CRIMINAL COURT CASES

As the following charts indicate, child victims are often related to the perpetrators or have another type of close relationship with them such as neighbours or teachers.

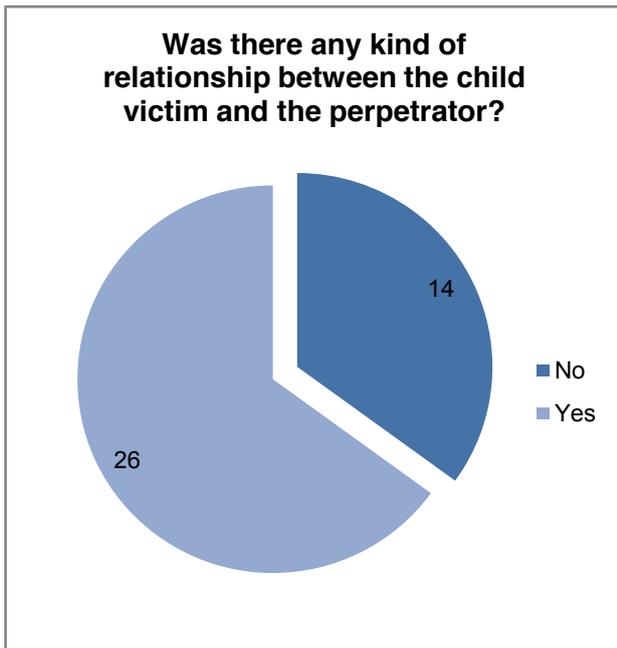


FIGURE 13 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - EXISTENCE OF ANY RELATIONSHIP BETWEEN CHILD VICTIMS AND PERPETRATORS

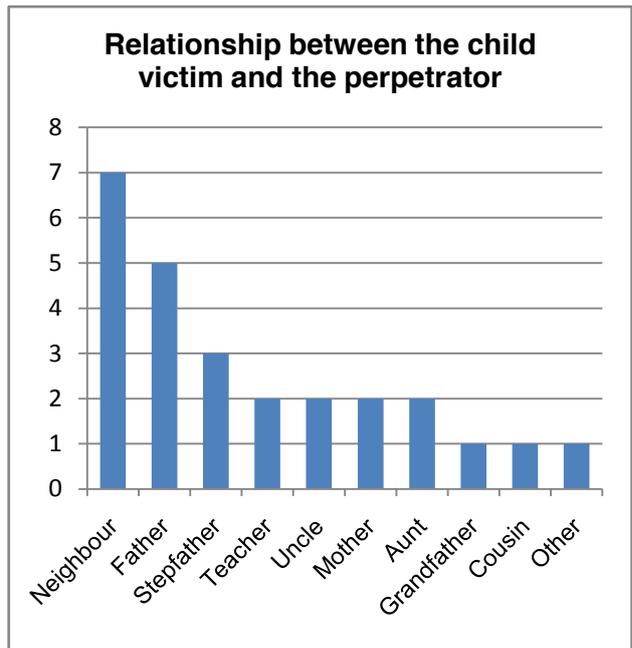


FIGURE 14 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - KIND OF RELATIONSHIP BETWEEN CHILD VICTIMS AND PERPETRATORS

VPU statistics are often imprecise due to poor data collection and lack of systematic recording.<sup>131</sup> However, they do indicate a similar profile for child victims, showing a high incidence of sexual violence perpetrated against girls.<sup>132</sup>

### *Reporting a crime*

As discussed in section 2.3., the first reports of a crime perpetrated against a child usually come from the child's family, from community members or from local leaders that take the initiative to report the crime to the formal authorities. These authorities may not always be judicial authorities as crimes are sometimes reported first to the social services depending on with which authority the community is more familiar. Interviews with relevant stakeholders and JSMP court monitoring indicate that direct reporting of a crime to the authorities by child victims themselves is extremely rare.

When a crime perpetrated against a child comes to the attention of the social services first, usually of a CPO, JSMP has found that the judicial authorities (the PNTL and the public prosecutors) are not always informed and are therefore not involved. This seems to happen for two reasons: poor understanding of the obligation to report such crimes to the judicial authorities and of the applicable legal framework, and/or a preference for informal resolution. In most districts visited by JSMP, there was limited cooperation and communication between the social services and the judicial authorities, mostly due to ignorance regarding the other's role. This means that if a case involving a child victim is first reported to the social services in a district where there is no collaboration with the judicial authorities, the child is unlikely to access the formal justice system.

*"When I hear about a rape case involving a minor girl, I go and talk to the man's family to convince the man to marry the victim. If both of them are single, they can just get married and solve the problem."*

*Child Protection Officer<sup>133</sup>*

The majority of cases involving child victims reported to the formal judicial authorities are serious crimes, mostly sexual violence or extreme physical abuse. The chart below illustrates that crimes perpetrated against children in Bacau and registered by the VPU were related to either sexual or physical violence.

---

<sup>131</sup> All of the statistics provided by the VPUs visited by JSMP during this research were collected using different methodologies and captured different information and, in many cases, the crime classification was not in accordance with the Penal Code. In addition, statistics provided by the national VPU were inconsistent with the statistics provided by district VPUs. None of the statistical data provided came from the IIMS.

<sup>132</sup> Statistics provided by the Baucau, Ermera, Manatuto and Oecusse VPUs as well as by the national VPU.

<sup>133</sup> Interview conducted on 25.09.2013.

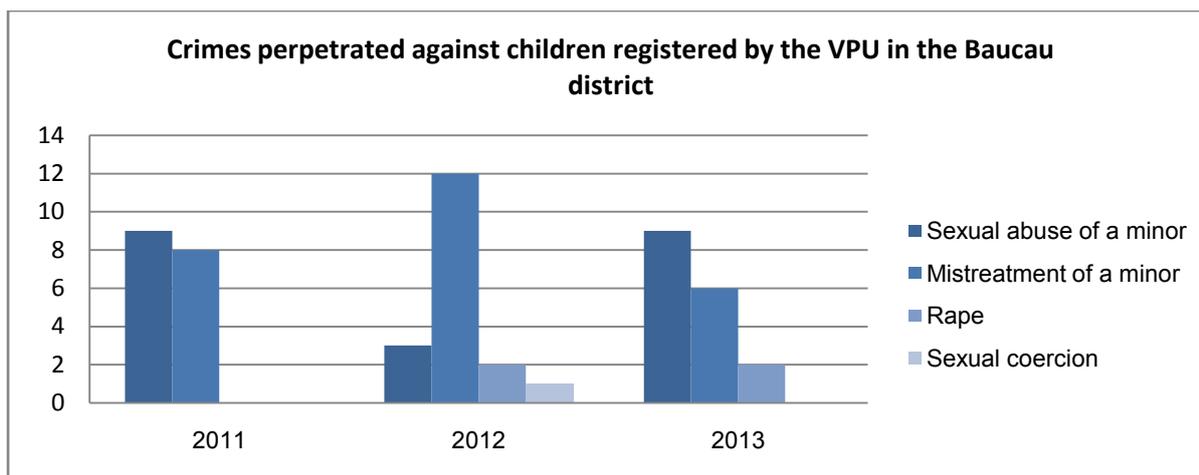


FIGURE 15 - REGISTERED COMPLAINTS OF CRIMES PERPETRATED AGAINST CHILDREN BY THE BAUCAU VPU (BAUCAU VPU STATISTICS 2011-2013)

Crimes perpetrated against children appear to be generally underreported to the formal judicial authorities. For instance, interviews and court monitoring of cases relating to physical violence indicate that usually only more serious cases of physical assault go through the formal justice system. Physical punishment is still widely accepted as a way to discipline children, both at home and at school.<sup>134</sup> In addition, there is a widespread cultural belief that "if there is no blood" then physical assault is not considered as reportable violent behaviour.<sup>135</sup> As a result, the threshold for acceptable violence against children becomes reprehensibly high.

### Case Study 1: Serious physical assault endangering a child's life - case of attempted aggravated homicide and simple assault<sup>136</sup>

#### *Mário's Story*

*Mário is a 8 year old boy from a remote region nine hours from Dili. Mário and two of his siblings were sent to live with his aunt a few years ago, after their parents moved to Indonesia. The three children see their aunt as their mother. She often used physical violence to discipline Mário and his siblings.*

<sup>134</sup> In a 2006 research examining the attitudes and practices of teachers and parents towards discipline of children, over two thirds of children (67%) reported being beaten with a stick by teachers, and 39% reported being slapped on the face by teachers; 60% reported being beaten with a stick by their parents; in UNICEF, *Speak Nicely to Me: A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*, 2006. See also UNICEF & The Ministry of Social Solidarity, *Mapping and assessment of the child protection system in Timor-Leste*, 2011, p. 137

<sup>135</sup> The belief that only when the victims bleeds is physical violence serious and unacceptable has been repeatedly documented: UNICEF& The Ministry of Social Solidarity, *Mapping and assessment of the child protection system in Timor-Leste*, 2011, p. 131 and Ba Futuru, *Policy Recommendations*, Vol. 2, October 2013, p. 18.

<sup>136</sup> Case no. 250/PEN/2013/TDS.

*One morning late last year, Mário's aunt couldn't find \$20 and suspected one of the children had taken the money. She severely beat the three children threatening them with more violence if they wouldn't give her the money back. At lunch time she left for the market and told them "If when I come back the money is still missing, I will kill you". When she came back late that afternoon she continued to beat the three children. She then took Mário to the bedroom where she poured gasoline over him and set him alight with a match. Mário suffered severe burning all over his body and had to be taken to the Dili hospital. He is now permanently disfigured and disabled.*

*Mário's aunt was arrested and put under preventive detention. She was charged with attempted aggravated homicide and simple assault characterised as domestic violence, in accordance with articles 145, 139 and 23 of the Penal Code and article 35 of the LADV. The court found her guilty of the charges and sentenced her to twelve years imprisonment.*

*No judicial proceedings regarding the children's custody were initiated by the public prosecutor.*

In Case Study 1, the child victims had been suffering from physical violence from their main care giver for years. Despite that fact, the abuse was only reported and the authorities became involved after one of the children was a victim of an extreme act of violence. The crime perpetrated against the other two children would most likely not have been prosecuted without that more serious crime. In another case monitored by JSMP<sup>138</sup>, it was proven in court that the defendant was frequently violent with two children in her care. However, the abuse was only reported to the authorities when the defendant assaulted the children with a machete causing them serious injury. Tolerance of physical violence against children is a serious obstacle to the reporting of such crimes to the formal judicial authorities.

As noted above, in addition to physical violence, there is also a high incidence of sexual violence against children. Civil society organisations have repeatedly called attention to this issue, however the dimensions of the problem remain unclear. Despite this lack of clarity, court monitoring, police statistics, existing research and statistics from NGOs working in child protection all

*"Sexual violence is such a normal thing in some of the child victims' lives that some of them don't realise that that was the reason why they were sent to us."*

*- Programme officer at an alternative care institution<sup>137</sup>*

<sup>137</sup> Interview conducted on 14.01.2014.

<sup>138</sup> Case no. 177/2013/TDD.

indicate that sexual violence against children is a widespread problem. In particular, sexual violence within the family - incest - is not uncommon.<sup>139</sup> Due to close family ties, economic dependence and a male dominated culture where community harmony is a primary concern, reporting such crimes is understandably difficult. Often incest cases involving children are drawn to the attention of the authorities only when the victim becomes pregnant, as evidenced in Case Study 2.

### **Case Study 2: Sexual abuse of a child by her father (incest) - case of aggravated sexual abuse of a minor<sup>140</sup>**

#### ***Nelita's Story***

*Nelita is a 14 year old girl from a remote village in a mountainous region three hours from Dili. A few years ago, her mother died and Nelita had to stop going to school so that she could look after her younger siblings. Nelita's father worked in Dili all week and came back home every Friday evening. Last year, on a Friday night after arriving from Dili, Nelita's father told her to come and sleep next to him. He then sexually abused Nelita and threatened her not to tell anyone.*

*After that Friday night, every weekend when Nelita's father came home from Dili he would sexually abuse her. This kept on happening for several months until Nelita became pregnant. She was then only 13 years old.*

*When Nelita's maternal family found out that she had become pregnant from being repeatedly sexually abused by her father, they took the matter to the lia-nain. It was decided that Nelita's father would have to pay her maternal grandparents several valuable items: palm wine and some gold ornaments. However, Nelita's grandparents did not think that this was enough to settle the matter and reported the case to the PNTL. Not long after, VPU officers came to Nelita's village to take her to a shelter for abused women and children hours away from her village.*

*While already living at the shelter, Nelita's case was referred to the public prosecutor who then charged her father with the crime of aggravated sexual abuse of a minor, in accordance with articles 177 and 182. He was arrested and put under preventive detention. A few months later, the first hearing was held in the Dili District Court and Nelita testified against her father. She was 8 months pregnant when she testified before the court. Nelita cried while*

---

<sup>139</sup> Judicial System Monitoring Programme (JSMP), *Incest in Timor-Leste: an Unrecognised Crime*, 2012. Available at <http://jsmp.tl/wp-content/uploads/2012/05/Incest-in-Timor-Leste-August-2012.pdf>

<sup>140</sup> Case no. 135/2012/TDD.

*she was asked questions and was barely able to speak.*

*Three months after the first hearing, Nelita's father was sentenced to 20 years in prison. At the time of the reading of the sentence, Nelita was still living at the shelter with her newborn baby. Nelita told JSMP that she was glad her father was being punished for what he had done but that she felt ashamed about what had happened to her.*

*After the case was closed, the shelter took the initiative to arrange for Nelita to return to her village to live with her maternal grandparents. The MSS was informed about this case but was never involved in supporting Nelita, her siblings or her grandparents.*

In Case Study 2, the abusive father was arrested shortly after a complaint was made to the authorities and subsequently put under preventive detention while awaiting trial. However, in other incest cases, JSMP has found that it is not uncommon for suspected perpetrators to be permitted to continue living in the family home with the child victim and other children. In some cases, after the crime is reported to the formal authorities, it is the child victim who is removed from the home and placed in an alternative care institution while other children are left living with the suspected perpetrator, leaving them vulnerable to similar sexual abuse.<sup>141</sup> Police protection and welfare support from the social services is largely absent at this stage, as evidenced in Case Study 2 where the child victim and her siblings did not receive any assistance by the social services.

JSMP has found that there is a lack of prompt and preventive interventions by the formal authorities to protect child victims and other vulnerable children once a crime has been reported. This puts child victims in situations where they can suffer further abuse and discourages the community from reporting crimes perpetrated against children because they see little action being taken by authorities in response to their complaints.

JSMP monitoring of court cases and interviews with key stakeholders have also shown that formal complaints are frequently only filed after a significant period of time has passed since the crime's occurrence. JSMP observed that common reasons for this delay (other than the child not reporting the crime to someone) include:

- family or community pressure not to report the crime,
- resorting to the formal justice system only after a settlement through customary justice has been attempted and has either failed or left the victim's family dissatisfied with the outcome, or

---

<sup>141</sup> JSMP has documented and called attention to such cases in the past: Judicial System Monitoring Programme (JSMP), *Incest in Timor-Leste: an Unrecognised Crime*, 2012, p. 16, 17 and 20-22. Available at <http://jsmp.tl/wp-content/uploads/2012/05/Incest-in-Timor-Leste-August-2012.pdf>

- simple ignorance about the possibility of accessing the formal justice system.

Regardless of the reason, delayed reporting often means that the only available evidence will be the child's testimony, especially in cases of sexual violence, which places child victims under a considerable amount of pressure. This pressure is even greater considering that there are few counselling services or staff specialised in supporting child victims available to support them in this process. As mentioned above, in some cases where the perpetrator is a close family member, children continue to live with or have close contact with the perpetrator, which can pose serious threats to the child victims' safety and well-being. The lack of other supporting evidence can be an overwhelming obstacle for many child victims accessing the formal justice system.

Besides the issue of delayed reporting, bringing a case involving a child victim to the attention of the authorities is not always a simple task. The availability of direct police intervention is limited. Several NGOs working in child protection and justice at the community level have reported that even in emergency situations of imminent danger to a child, the police are unlikely to respond when contacted.<sup>142</sup> This is also true in relation to the VPU, who have confirmed they find it difficult to respond to a significant number of the calls they receive. VPU officers have pointed to the lack of staff and transport as the main causes for their delayed response to calls for intervention. In addition, NGOs working in child protection report a general unwillingness to intervene without an order from a public prosecutor, which is not easy to obtain. Interviews conducted during this research also revealed that police officers do not understand well enough when they are required to (and when they cannot) intervene without an order from the public prosecutor.

Due to the limited availability of the VPU as a specialised police unit for cases involving child victims and other vulnerable groups, the gap is usually filled by the community police. However, community police officers seem to show considerably less skill and sensitivity in dealing with cases involving child victims in an appropriate way. Concerns have been raised about cases involving child victims and domestic violence cases being referred back to community leaders such as the *chefe de suco* and the *chefe de aldeia* by the community police, instead of processing the cases through the formal justice system. This is reported to happen even against the victim's and the victim's family's wishes, with the community police pressuring the victim and his or her family not to submit a formal complaint. Some civil society organisations believe that the community police might be receiving some financial benefits from community leaders for referring these cases back to them for mediation

---

<sup>142</sup> See, for instance, Ba Futuru, *Policy Recommendations*, Vol. 2, October 2013, p.9.

through traditional justice mechanisms.<sup>143</sup> Investigation of this issue should be conducted and internal monitoring within the police force should be reinforced.

In addition to this, several NGOs have also expressed the concern that the PNTL does not always refer public crimes to the public prosecutors. Several reasons are given for this:

- lack of understanding of their duty to do so,
- corruption, and
- simple lack of "interest" in performing their duties.

A number of public prosecutors have agreed that this is an issue.

When, despite all of these obstacles, a crime perpetrated against a child is indeed reported to the authorities, children's access to justice is hindered by other problems such as lack of understanding by the child victim and his/her family of their rights, and of the justice system in general. This leads to misunderstandings and often the loss of their

Child victims have the **right to be informed** about their legal rights and about the criminal proceedings.

Section VII of the "*Guidelines on Justice in Matters involving Child Victims and Witnesses*"

opportunity to access the justice system. Further, police officers themselves sometimes do not have enough knowledge to duly inform child victims and their families. For instance, child victims and their families might not be informed that they have the right to free legal aid and that the judicial proceedings would not comprise any financial costs, which might discourage them to pursue judicial proceedings.

It is challenging to obtain a precise understanding of actual reporting trends. This is mainly due to an almost total absence of coherent and well recorded data on criminal cases involving children reported to the authorities, and no internal monitoring. The way in which PNTL units, and the VPU in particular, collect data on reported cases is not standardised. This leads to each unit collecting different forms of data. Actual use of the recently implemented IIMS has the potential to change the current situation as it would standardise the form and the method in which information is collected and recorded by judicial authorities.<sup>144</sup>

All of these hurdles affect the number of cases that actually reach the investigation and prosecution phases of the judicial process.

---

<sup>143</sup> For obvious reasons these organisations do not wish to be named.

<sup>144</sup> As was mentioned in section 2.4, the IIMS is currently limitedly used due to lack of reliable internet connections.

### **Summary of obstacles to reporting a crime perpetrated against a child:**

- Physical violence as an acceptable method of discipline;
- Delayed reporting;
- General lack of knowledge and understanding about the formal justice system;
- Disregard for reporting obligations by the PNTL and the CPOs;
- Weak cooperation between the social services and the judicial authorities;
- Preference for traditional justice;
- Misuse of power and influence by the police forces;
- Not enough structures and police officers specialised in child matters.

### *Investigation and Charging*

Progressing from reporting to actual investigation and prosecution is not always a straightforward step. Poor communication between the PNTL and the public prosecutors, and a certain degree of disregard for reporting obligations - whether willingly or due to lack of understanding of their duties - is a major obstacle to commencing official investigations.

#### **Misclassification of crimes and poor investigation**

Another obstacle to investigation and prosecution is the common misclassification of reported crimes. Without any standardised complaints' recording system, reported crimes are not recorded in a way that is consistent with the relevant provisions of the Penal Code. For instance, during this research JSMP found that the term "abandonment" is used in official PNTL and CPO records as a crime involving child victims. The term "abandonment" is used in a way that can encompass a variety of situations that range from the child's parents' separation to failure to pay child support. This term is seldom used to refer to the actual crime of "exposure or abandonment" defined by article 143 of the Penal Code. In fact, it is sometimes used to refer to situations that do not even constitute a crime. Another common example of misclassification is "fighting each other" which encompasses a range of different situations involving physical violence and could possibly refer to a number of crimes under the Penal Code.<sup>145</sup>

These misclassifications create serious difficulties when it comes to opening an investigation and to charging the defendant. At best, the public prosecutors have to change the classification of the crime, but sometimes it is not clear what the actual crime was, or even if

<sup>145</sup> Namely, articles 145, 146, 151, 152 and 155 of the Penal Code.

there was a crime at all, and prosecutors have to either restart investigations or close the case.

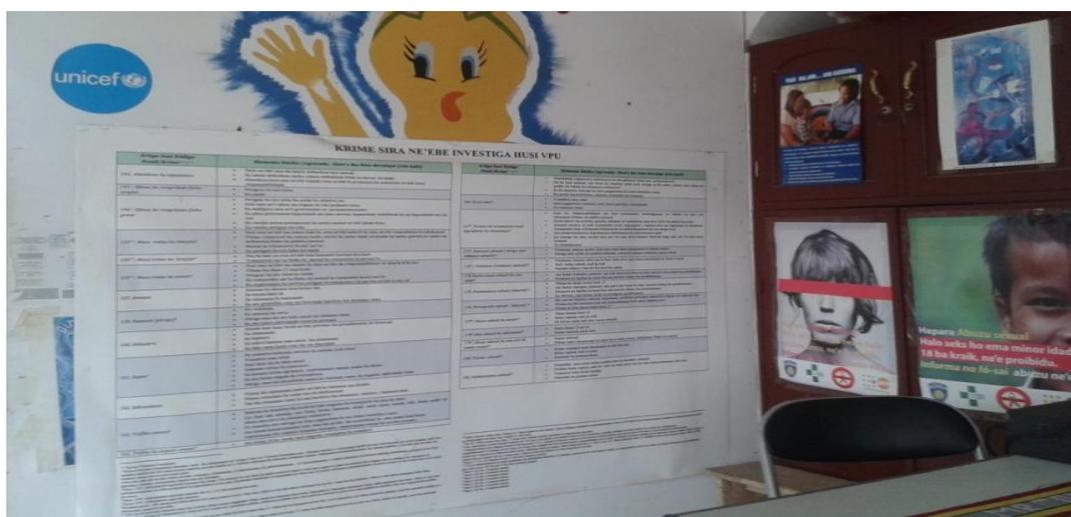


FIGURE 16 - CRIME CHART AT VPU - BAUCAU VPU (NOVEMBER 2013)

The distribution of banners displaying a breakdown of the most common crimes with simple explanations (see Figure 16) in police stations seems to have been a useful tool for police officers. However, a standardised recording system is needed to comprehensively resolve this problem.

Another common issue affecting this phase of criminal proceedings is the poor quality of investigations. The PNTL's evidence collection and investigation skills are very poor and their resources are limited. This results in the charges being supported by limited and/or weak evidence, which ultimately can lead to the closing of the cases. In addition to this, particularly in cases of sexual or physical abuse of children, coordination with the health services is sometimes difficult and often health facilities do not have either the necessary equipment, or the knowledge to perform medical-forensic examinations. This means that in order to collect important forensic evidence, judicial officers must rely on NGOs, namely PRADET<sup>146</sup>, to collect medical-forensic evidence.<sup>147</sup> Lack of evidence other than the child victim's testimony places a heavy burden on the child as the whole prosecution is dependent upon that testimony. With no other evidence to support his/her testimony, the child is put under incredible pressure and is left more vulnerable to threats or pressure not to take the case further or to change their testimony.

<sup>146</sup> PRADET is a Timorese NGO that provides a psychosocial service for people who are experiencing trauma, mental illness and other psychosocial problems; it also provides counselling, advancement of children's rights, child protection, conflict resolution and advocacy to improve clients' rights in the community. PRADET has an MOU with the Ministry of Health to provide psychosocial services and an MOU with the *Instituto da Saúde*, (INS) to provide training for medical forensic examiners.

<sup>147</sup> These medical forensic examinations can be done at Pradet's *Fatin Hakmatek* in Dili, Suai, Maliana and Oecusse.

Investigations conducted by public prosecutors are also affected by the same lack of resources and are not very thorough. In addition, civil society organisations working in child protection have reported cases where public prosecutors have discouraged the child victim's family from pursuing judicial action and disregarded their obligation to investigate and prosecute public crimes. Such unwillingness by public prosecutors to carry out investigations and prosecute crimes perpetrated against children poses a serious threat to children's access to justice. JSMP believes that internal monitoring and evaluation of public prosecutors' performance should be reinforced in order to prevent and discipline such conduct.



FIGURE 17 - CHILD FRIENDLY INTERVIEW ROOM - VPU MANATUTO (OCTOBER 2013)

In relation to child friendly interviewing, as noted above in section 2.4., JSMP has observed that most VPU officers and public prosecutors have a certain degree of understanding of child friendly interview techniques, and some VPUs are equipped with child friendly spaces. However, ideally the task of interviewing child victims should be performed by specialized professionals such as child psychologists. Currently, there are no such specialised professionals in the country.

### **Limited understanding of the law**

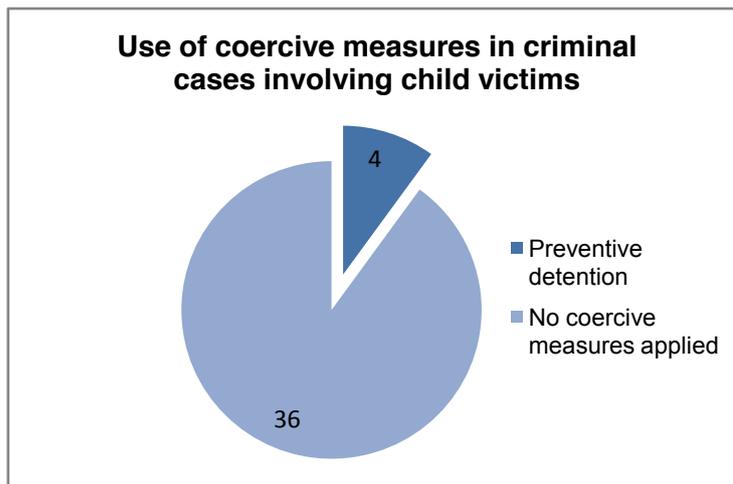
A widespread limited understanding of the law is also a critical issue. This is not only true for the wider community but also for a worryingly high number of judicial actors. This is a major obstacle to children's access to justice. For instance, flawed application of the law by the public prosecutors can result in weak or incomplete charging which can lead to further delays or even to the acquittal of perpetrators.<sup>148</sup>

**The right to special preventive measures:** special strategies are required for child victims who are vulnerable to re-victimisation.

Section XIV of the "*Guidelines on Justice in Matters involving Child Victims and Witnesses*"

<sup>148</sup> Example of flawed charging: in one court case monitored by JSMP (case no.44/PEN/2012/TDS), the prosecution charged the defendant for a crime of rape aggravated by the fact that the victim was underage - articles 172 and 173 of the Penal Code. The charges were incorrect since the victim was under 14 and the crime of sexual abuse of a minor would apply - article 177 of the Penal Code. In this case, the court was able to correct the charges without much delay.

The gaps left by the lack of resources, staff and knowledge are often filled by NGOs and other private organisations. As with the child protection system, the availability of support services to child victims is dependent on such organisations. Some judicial actors recognise that services



such as transport for child victims, forensic examinations, legal aid

FIGURE 18 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - USE OF COERCIVE MEASURES IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS

and information, legal representation and follow-up after trial, are all services that are often only provided by non-government organisations. In many cases, judicial actors perceive these non-government organisations to be more effective in taking cases forward. For instance, most of ALFeLa's<sup>149</sup> clients are referred by the PNTL - from January to July 2013, 72% of ALFeLa's clients were referred by the PNTL.<sup>150</sup>

Limited understanding of the legal framework combined with limited resources may also be the cause of the rare resort to coercive measures designed to protect victims and the community in general. It is rare for public prosecutors to request the courts to apply such measures in order to protect children (see Figure 18). For example, as mentioned above, JSMP has found that in cases of sexual abuse within the family it is unusual for the suspect to be removed - pursuant to a judicial order - from the family home where there are other children potentially at risk of also becoming victims.

**Summary of obstacles to the investigation and charging of a crime perpetrated against a child:**

- Poor communication between the PNTL and public prosecutors;
- Misclassification of crimes;
- Poor quality of investigations due to lack of knowledge and resources;
- Disregard for the legal obligation to investigate and prosecute public crimes;
- Rare use of precautionary/security and child protection measures;
- Technically poor and incomplete charging;
- General poor understanding of the legal framework.

<sup>149</sup> ALFeLa - Asistència Legal ba Feto no Labarik - is a local NGO providing legal aid to women and children.

<sup>150</sup> According to ALFeLa in January 2014, referrals from the PNTL constituted their primary source of clients, with 281 clients out of 392 referred by the PNTL, and referrals from other NGOs their second most common source in 2013.

## Court hearings

Attending a court hearing and testifying is a difficult experience for any child victim, and the discussion of their painful and traumatising situation by strangers in a formal court room can cause significant distress. However, in Timor-Leste there are some factors that can make that experience even more distressing for child victims.

### Threats to child victims' safety and privacy

In Timor-Leste, even just travelling to the court house can be a challenging and sometimes harmful experience. Adding to the accessibility difficulties discussed in section 2.4, several NGOs have reported that it is common practice amongst the PNTL and MSS to arrange for child

The **right to privacy**: child victims should have their privacy protected as a matter of primary importance.

Section XIV of the "*Guidelines on Justice in*

victims to travel to court in the same car as the alleged perpetrator of the crime. This can be an intimidating and incredibly distressing situation for a child victim. Lack of other available transport and little tact contribute to such practice. Once at the court house, child friendly waiting spaces are usually not available<sup>151</sup> and child victims must wait for the hearing next to the alleged perpetrator and his/her family (see Figure 14). This is despite the Government's recognition of the issue of victims' and witnesses' safety and its plans to tackle it.<sup>152</sup> These constraints may act as strong deterrents for child victims when deciding whether to access the court system.

A child victim's right to privacy is also often compromised. Some of the courts publish hearing schedules that are available to the public which include the names of children involved in current and upcoming court cases. Further, hearings of cases involving children are not always closed to the public and media (see Figure 21). Threats to children's right to privacy and safety have also been a concern in mobile courts.<sup>153</sup> Indeed, mobile courts have made little effort to guarantee child victims' right to privacy and safety, particularly in cases related to sexual violence. According to the Penal Procedure Code, the court can restrict the

<sup>151</sup> Currently, only the Suai District Court has a separate waiting space for victims and witnesses, but it is not always used. JSMP court monitoring and other civil society organisations' have observed that this room is only used in more serious cases, such as rape and homicide, and that it is not made available for all victims and witnesses, including children.

<sup>152</sup> See the 2010 Strategic Plan for the Justice Sector (Government Resolution No. 30/2010 of the 2<sup>nd</sup> of June), p. 4127, 4132, 4151 and 4153; and Outcome 9 of Strategic Focus Access to Justice of the National Action Plan on Gender-Based Violence, p. 67.

<sup>153</sup> JSMP, "Suai District Court conducts mobile court in Bobonaro District", press released published on 03.07.2013, available at <http://jsmp.tl/wp-content/uploads/2013/01/tribunal-Suai-julgamentu-movel-ingles1.pdf> and JSMP, "Vítima ba kazu violénsia seksuál la kontenti ho prosesu tribunál móvel ne'ebé loke ba públiku", press released published on 03.10.2013, available at [http://jsmp.tl/wp-content/uploads/2013/01/PrWJUJulgamentuMOVELTribunalSUAI-MALIAN\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2013/01/PrWJUJulgamentuMOVELTribunalSUAI-MALIAN_TETUM.pdf)

public nature of the proceedings in cases of sexual violence related crimes in which a child is involved<sup>154</sup> and whenever it is deemed necessary to protect human dignity.<sup>155</sup> These provisions should be applied consistently in both mobile and permanent courts.

In relation to child victims' participation in court proceedings, JSMP has observed that child victims are usually present at the hearings unless they are considered by the court or prosecutors too young to do so (typically under 7 years) or if they are not required to testify.

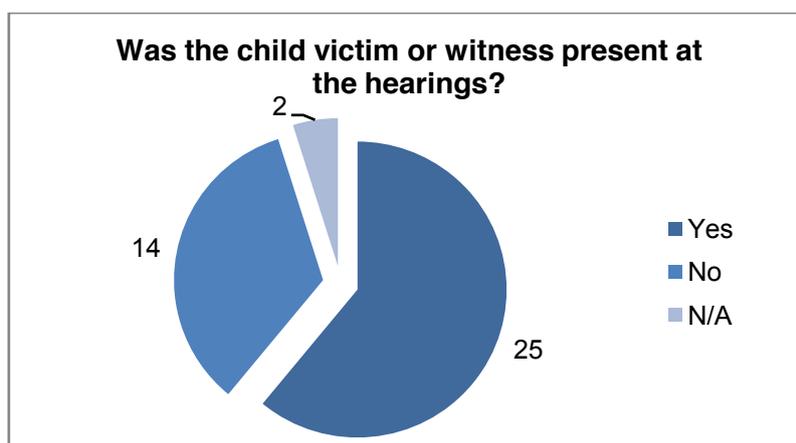


FIGURE 19 - JSMP COURT MONITORING STATISTICS (MAR 2013 TO APR 2014) - ATTENDANCE OF CHILD VICTIMS AND WITNESSES IN CRIMINAL COURT CASES

### Insufficient use of child protection measures

However, the fact that children are usually present in the court room does not mean that their right to participate is guaranteed. Lack of child protection measures and child friendly procedures combined with little sensitivity towards children's special needs are serious obstacles to the effective participation of child victims. Currently, there is little difference in the way cases involving adult victims and child victims are handled. Few child protection measures are applied on a regular basis (see Figures 20 and 21).

The **right to be protected from hardship during the justice process**: measures should be taken to prevent hardship during judicial proceedings in order to ensure that the best interests and dignity of child victims are respected.

Section XIV of the "Guidelines on Justice in Matters involving Child Victims and Witnesses"

<sup>154</sup> Article 76/5 of the Penal Procedure Code provides that in criminal cases related to sexual violence where the victim is under 18, the proceedings should not be public.

<sup>155</sup> Article 76/1 of the Penal Procedure Code.

JSMP has also observed that the approach to criminal cases involving child victims greatly varies from court to court. Practices considered unacceptable by some judicial actors - such as cross examining child victims in order to confront them with the suspect - are seen as perfectly acceptable by others.<sup>156</sup> However, JSMP has observed that at least some sensitive judicial actors have accepted the use of statements collected for future use<sup>157</sup> in cases involving child victims. This is a good way of protecting children from unnecessary trauma caused by repeated questioning about the harm they have already suffered. Unfortunately, some judicial actors interpret this provision as only applicable in cases where a witness is terminally ill or about to leave the country. Finally, depending on the judge's sensitivity towards children's special needs, some occasionally order other measures to make hearings less threatening to children, such as requiring judges, prosecutors and defenders to wear normal clothes instead of formal court attire.

Criminal cases involving child victims are usually complex cases where the socio-economic and family background can be important factors that should be taken into consideration. This means that a multidisciplinary approach should be adopted by involving the social services and other professionals or experts such as psychologists. However, such a multidisciplinary approach is not a readily-achievable reality in Timor-Leste, when the fact that there are no psychologists in the country rules out any possible involvement of such experts. However, despite being constrained by a critical lack of human resources, social services do exist. Indeed, these social services are bound by law to collaborate with judicial authorities in

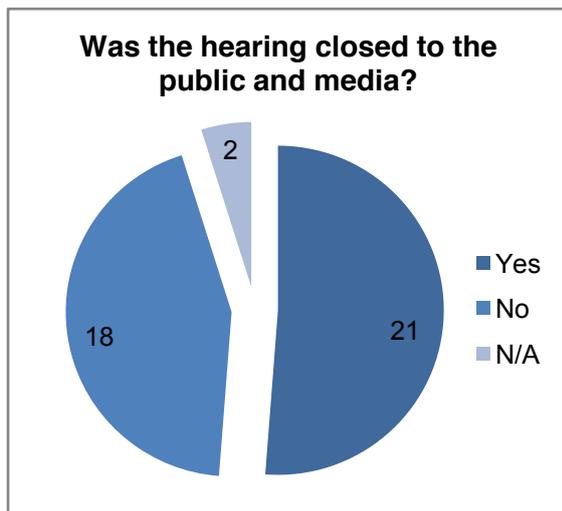


FIGURE 20 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - CLOSED HEARINGS IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS AND WITNESSES

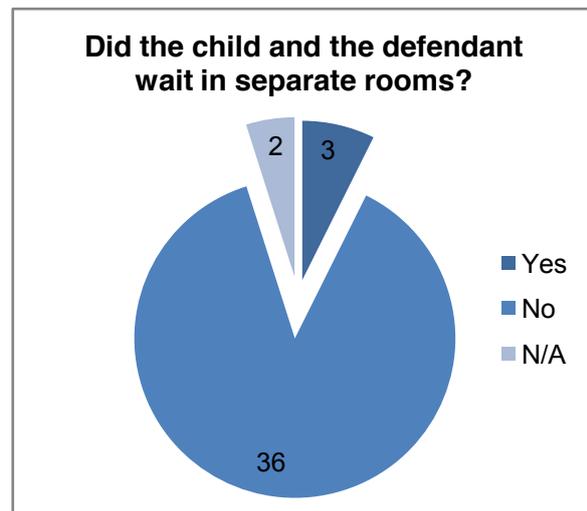


FIGURE 21 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - USE OF SEPARATE WAITING ROOMS IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS AND WITNESSES

<sup>156</sup> See JSMP, "Court acquits defendant in case of sexual abuse of a minor", press release published on 07.08.2013. Available at [http://jsmp.tl/wp-content/uploads/2013/01/PR-Tribunal-Absolve-kazu-Abuzu-Seksual-ba-menor\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2013/01/PR-Tribunal-Absolve-kazu-Abuzu-Seksual-ba-menor_ENGLISH.pdf)

<sup>157</sup> Article 230 of the Criminal Procedure Code.

cases involving child victims by, for example, providing the courts with reports informing them of the child's socio-economic and family background.<sup>158</sup> However, as was pointed out in section 2.3, cooperation between the courts and the social services is weak. Nearly all judicial officers interviewed by JSMP noted how difficult it is to obtain social reports from the MSS, as the MSS rarely replies to requests made by the courts for such reports.<sup>159</sup> Indeed, JSMP came across only one court case<sup>160</sup> where the court had received a social report by the social services. Considering the importance of the social services' involvement in such cases, improvement of the collaboration between the judicial authorities and the MSS should be prioritised.

**Summary of obstacles to the trial of crimes perpetrated against children in a child friendly way:**

- Children's safety is not guaranteed;
- Children's privacy is not always protected;
- Cross-examination between the child and the alleged perpetrator, and other inappropriate proceedings for children;
- Inconsistent use of child protection measures;
- No involvement by the social services.

### *Sentencing and remedy*

Sentencing is a complex decision making process that should take into consideration a number of factors. According to the Constitution and the Penal Code, in the Timorese legal system criminal sentences should pursue a double objective: the protection of life in society and the reintegration of the offender.<sup>161</sup> In relation to cases of violence against children, sentences should protect child victims, prevent the offender from committing further such crimes, rehabilitate the offender and inform the wider community that violence against children is a crime not tolerated by the State.

In addition to the objectives of a criminal sentence, the courts also take into account the particular circumstances and background of each case.<sup>162</sup> Such circumstances include the seriousness of the crime, any previous conviction, the damage caused to the victim,

---

<sup>158</sup> The MSS is bound by law to collaborate with the courts by providing social reports or any other requested information; see article 10/2/d) of Decree-law No. 47/2012, of the 5<sup>th</sup> of December.

<sup>159</sup> As was already mentioned in section 2.3, such requests are made through official letters from the courts to the social services.

<sup>160</sup> Case no. 127/2008/TDS.

<sup>161</sup> Article 61 of the Penal Code.

<sup>162</sup> Article 62 of the Penal Code.

ensuring the victim's safety, and the likelihood of the perpetrator reoffending. Currently, sentencing in cases involving child victims do not always address such important concerns.

However, due to the lack of a reliable criminal record system, it is difficult to know whether or not defendants have been previously convicted for similar child abuse charges.<sup>163</sup> Such information greatly influences the decision making process regarding the most appropriate sentence in a particular case. Without information on past convictions, there is the risk that sentences might be inappropriate and fail to protect child victims and the wider community.

### **Issues with the interpretation of provisions on sentencing**

Another issue affecting sentencing in cases involving child victims is the interpretation of provisions on sentencing and on mitigating circumstances that reduce the abstract measure of the applicable penalty. JSMP's monitoring of court cases involving child victims has shown that at times, courts take into consideration as mitigating circumstances certain factors that should not be considered. Courts are given a certain degree of discretion in deciding the type and quantum of the penalty.<sup>164</sup> However, JSMP has observed some concerningly broad interpretations of provisions on sentencing. For instance, JSMP has observed that the defendant's occupation or profession, whether or not he or she is respected in the community, and other aspects of the defendant's social position, have been considered mitigating factors in determining the penalty in cases of sexual abuse of young children. Provisions providing for extraordinary mitigation of the penalty when a long period of time has passed since the crime have been interpreted to include periods of time as short as 3 years. Considering that the Timorese justice system suffers from chronic delays, this interpretation would mean that most criminal convictions would benefit from an extraordinary mitigation of the penalty. JSMP considers that in crimes of violence against children, particularly in cases of sexual violence, factors such as the offender's social position and the passing of a few years cannot be seen as mitigating factors that diminish the guilt of the perpetrator. In some cases, these broad interpretations of the law have led to the suspension of sentence<sup>165</sup> in cases of sexual abuse of children (see Case Study 3 below). In such cases, and considering that currently there

**The right to reparation:** child victims should receive reparation in order to achieve full redress, reintegration and recovery.

Section XIII of the "*Guidelines on Justice in Matters involving Child Victims and Witnesses*"

---

<sup>163</sup> Although there is legislation on the establishment of a criminal record system - Decree-Law No. 16/2003 of the 1<sup>st</sup> of October - implementation has so far been limited.

<sup>164</sup> Article 51 of the Penal Code.

<sup>165</sup> This is possible under article 68/1 of the Penal Code that allows for the suspension of the execution of the penalty whenever it does not exceed 3 years of imprisonment. If mitigating circumstances lower the sentence to less than 3 years, its execution can be suspended.

are no means of monitoring convicted offenders during the suspension of a sentence, the safety and well-being of the child victim and of other children in the community may be threatened by such convicted sex offenders. In addition, suspended sentences can send the message to the community that violence against children is not a serious crime. Case Study 3 is a paradigmatic example of how unduly broad interpretation of provisions on extraordinary mitigation combined with poor understanding of the special nature of child abuse cases can result in inappropriate sentences.

### **Case Study 3: Suspended sentence in a case of sexual abuse of a child - case of sexual abuse of a minor<sup>166</sup>**

#### ***Justina's Story***

*Justina is a 9 year old girl from a rural area an hour away from Dili. She lives with her parents and siblings and some of her neighbours are extended family members.*

*One afternoon, when Justina was 6 years old, she was playing at her grandparents' house with her aunt and some other children when her cousin told her to come inside the house. Justina's cousin, a 19 year old young man who lived with Justina's grandparents, told her to come into his room so that she would read the alphabet like she had learnt at school. When Justina came into the room, her cousin grabbed her and sexually abused her. He told her that she could not tell anyone about what had happened.*

*After being sexually abused by her cousin, Justina was very traumatised and her parent's eventually found out what had happened. The crime was denounced to the formal judicial authorities and, after several delays, three years later a judicial court came to a decision. In the meantime, the case was also resolved within the family through traditional mediation mechanisms.*

*Justina's cousin was charged with the crime of sexual abuse of a minor, in accordance with article 177 of the Penal Code. The prosecution brought to the attention of the court that it had found during investigations that on previous occasions he had already touched Justina in a sexual manner. This was not mentioned in the court's decision.*

*Despite recognising the seriousness of the crime perpetrated against Justina when she was only 6 years old, the court ruled that there were extraordinary mitigating circumstances and thus sentenced her cousin to a lower penalty of 3 years in prison. However, also due to*

---

<sup>166</sup> Case no.332/2010/TDD.

*these extraordinary mitigating circumstances, the execution of the sentence was also suspended for a period of 4 years (articles 56 and 57). Among those circumstances were the fact that a "long period of time had gone by since the crime" and that Justina's cousin had not reoffended. The court also weighed in the defendant's favour the facts that he was a university student, was "socially well inserted" and that the matter had already been settled informally within the family.*

*The court also ruled that "no concrete damages" had been caused and that therefore Justina was not entitled to any civil compensation.*

*Further, no security measures were applied to Justina's cousin by the court and he returned to their village unmonitored by any judicial authority.*

In Case Study 3, a convicted child sex offender returned to the community unsupervised by any judicial authority due to a broad and arguably incorrect interpretation of the law. Besides failing the child victim's right to a fair ruling and reparation, this court decision also sends a message to the community that sexual abuse of children is not a serious crime. A decision such as this, fails to recognise the seriousness and long term effects of the damage caused to the child. In addition, such decisions are likely to lack of sufficient deterrent effect, both on the convicted person and the community at large.

However, it must also be noted that sentencing trends greatly vary from court to court. There is a wide discrepancy between sentencing in different courts. There is a high rate of convictions in cases of crimes perpetrated against children. Nevertheless, sentences can still be quite different even in similar cases of child abuse. For instance, in cases of sexual abuse of a minor, sentences in cases monitored by JSMP range from suspended 2 years of imprisonment<sup>167</sup> to 20 years of imprisonment.<sup>168</sup> How long proceedings take also greatly varies; JSMP estimates that they can range from 1 year to 5 or more years.

---

<sup>167</sup> Case no. 12/2012/TDD

<sup>168</sup> Case no. 135/2012/TDD

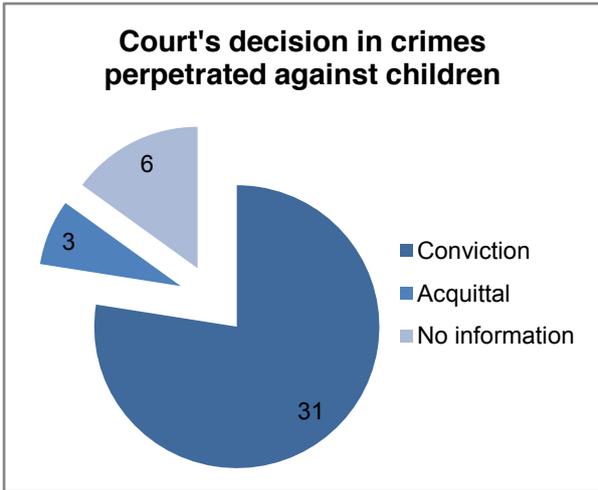


FIGURE 22 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - COURT'S DECISION IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS

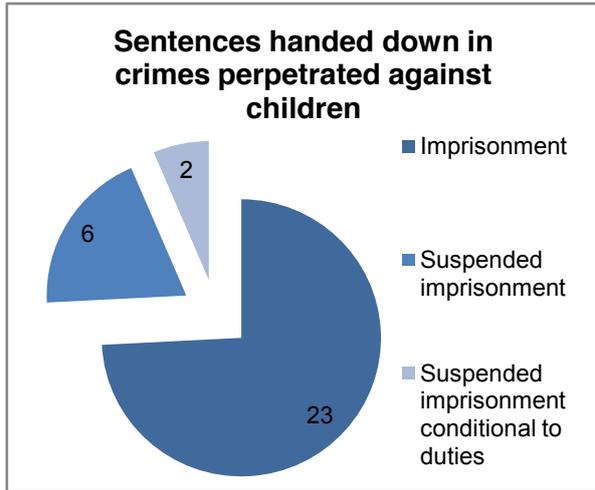


FIGURE 23 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - SENTENCES HANDED DOWN IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS

\* "No information" refers to cases for which a sentence hasn't still been handed down or where JSMP wasn't able to obtain information about the sentence.

### Consideration of traditional justice

Another concern that has arisen during JSMP's court monitoring is how previous traditional justice settlements are sometimes taken into consideration by the courts and how traditional justice can be perceived as an appropriate way to seek remedy and compensation. Although not frequently stated in written court decisions in cases involving child abuse, JSMP's court

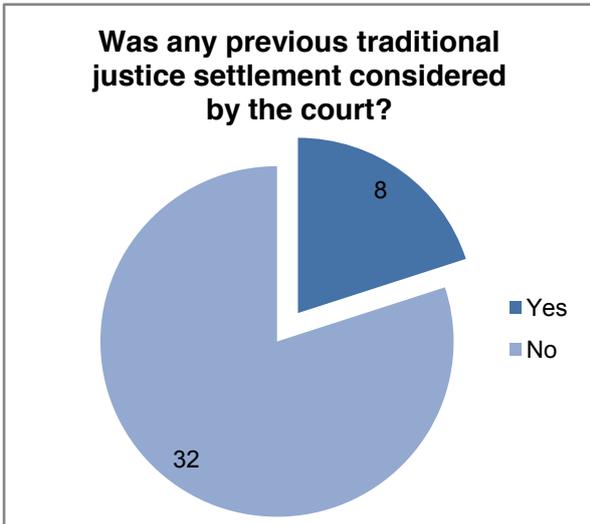


FIGURE 24 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - PREVIOUS TRADITIONAL JUSTICE SETTLEMENTS CONSIDERED IN CRIMINAL COURT CASES INVOLVING CHILD VICTIMS

monitoring has shown previous settlement through traditional justice mechanisms are sometimes taken into account in cases involving child victims as a mitigating factor. Figure 24 shows a breakdown of criminal cases involving child victims where the court heard evidence about previous use of traditional justice mechanisms or settlements achieved.<sup>169</sup> JSMP is concerned that such settlements do not offer any legal guarantees and often do not respect children's rights but are nonetheless given consideration. JSMP has also monitored at least one case where the court discouraged

<sup>169</sup> This does not mean however that there were not traditional justice settlements in other cases where this was not discussed in court. The possibility that there were any such settlements/resolution but were not discussed in court or mentioned by the parties cannot be excluded.

the child victim's family from seeking civil compensation through the formal justice system and instead suggested that they should seek compensation through traditional justice resolution mechanisms.

Again, the importance given by courts to traditional justice practices greatly varies from court to court. Adding to the broad differences in the interpretation of sentencing provisions, there is the risk that criminal sentences have a higher degree of unpredictability than is desirable. Broad differences in the sentencing of similar child abuse cases might create confusion and distrust among the communities about the judicial system in general, and about the treatment of child abuse crimes in particular.

### Frequent institutionalisation with no judicial oversight

Another issue of concern related to children's access to justice is the apparent preference for institutionalizing children as a child protection measure. JSMP has observed that a significant number of child victims involved in court cases are under the care of shelters and other alternative care institutions.

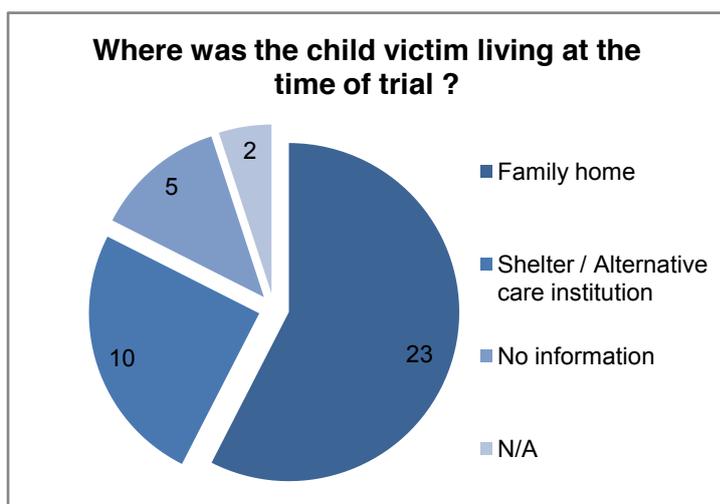


FIGURE 25 - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014) - CHILD VICTIMS LIVING ARRANGEMENTS AT THE TIME OF TRIAL

There are no procedures for the removal of children from their families nor for their placement in alternative care institutions. These placements are done in a very informal way and by a number of different authorities, often without any judicial intervention. Although in more serious and urgent cases in which a child is at risk, it might be necessary to immediately remove the child without first seeking a judicial order, removal of

children has not been limited to these situations of imminent harm. Child victims are usually placed in shelters and other alternative care institutions by the PNTL and by the MSS, as discussed in section 2.3. Even when the PNTL or the MSS are involved, public prosecutors are often not informed of the removal of children from their families and their placement in such institutions. In other cases, even when the public prosecutors are informed, judicial proceedings are still not initiated. This means that, in many cases, child victims are deprived of their right to access the formal justice system.

The table below illustrates this point. *Casa Vida* is a well-known institution which provides alternative care and shelter to abused girls where, despite receiving a high number of referrals by official judicial and welfare authorities, only a small number of cases proceed to court because those same authorities do not initiate judicial proceedings.

	<b>Total # child victims at Casa Vida</b>	<b>Child victims referred by the Public Prosecutor</b>	<b>Child victims referred by the PNTL</b>	<b>Child victims referred by the MSS</b>	<b># of cases tried in court</b>
<b>2010</b>	23	0	10	12	<b>1</b>
<b>2011</b>	19	0	5	13	<b>2</b>
<b>2012</b>	28	2	7	10	<b>2</b>
<b>2013</b>	12	3	1	4	<b>0</b>

FIGURE 26 - INFORMATION PROVIDED BY CASA VIDA IN FEBRUARY 2014 - REFERRALS OF CHILD VICTIMS BY FORMAL JUDICIAL AND WELFARE AUTHORITIES FROM 2010 TO 2013.

In the cases where criminal investigations and proceedings are initiated, the matter of the child victim's institutionalisation is still not addressed by the judicial authorities. The fact that a minor has been removed from his/her family and placed in an alternative care institution is apparently not a concern to judicial authorities. All of the judicial actors interviewed by JSMP, including judges and prosecutors, saw this matter as something outside of their competence<sup>170</sup> and only a small number perceived frequent institutionalisation of children without consideration of other solutions (e.g. placement with relatives, foster care, providing welfare support to the child's family) as an issue of concern.

This situation gives rise to a number of concerns, including:

- With no judicial control of the removal of children from their families, human rights violations and abuse of power situations can easily occur;
- The children's legal status is unclear - even though shelters might have de facto custody, abusive parents, or other abusive guardians, would still have legal custody of their children.

Indeed, in such cases, civil proceedings relating to the child victim's custody, abusive parents' parental authority<sup>171</sup> (when the parents are the perpetrators) and the child's future should be initiated concurrently with criminal proceedings and finalised once the criminal proceedings are concluded. Currently, such proceedings are never initiated. Without any sort of involvement by the justice system, children can stay unmonitored in alternative care institutions indefinitely. What happens to a child victim during criminal proceedings and after they are completed is a matter which is never addressed by the court.

<sup>170</sup> Actually, the Civil Code's articles 1797 and 1800 provide that public prosecutors have the responsibility to bring such matters to the attention of a court.

<sup>171</sup> Article 1795 of the Civil Code.

The placement in alternative care institutions itself poses serious problems. As there is no legislation or regulations on minimum requirements for shelters and other alternative care institutions housing vulnerable children, children's safety and well-being is compromised.<sup>172</sup> With no official government accreditation system for institutions sheltering children, any organisation can become a "safe house" for child victims. Although there are some very good alternative care institutions for children providing quality care and rehabilitation services such as Casa Vida, others do not have the sufficient conditions to properly care for child victims. For instance, JSMP visited one shelter where children were unsupervised all day, and older children looked after younger children and did all of the household work.

Authorities placing child victims in alternative care institutions do not follow-up or monitor the children's situation in a systematic way. In addition, there is also no official registry on the removal and placement of child victims by the MSS, the VPU or the courts. Unless the alternative care institutions take the initiative to keep records themselves, there is rarely any information on the children's background, date of admission, date of reintegration, status of the judicial proceedings and so on. The duration of these placements usually depends on the institution's own practice and regulations.

NGOs working in legal aid and child protection have reported that some of these institutions have a low understanding of children's legal rights as child victims, and of the justice system in general. As a result, they do not seek the intervention of the judicial authorities and sometimes even deny children's access to the formal justice system. This situation results in secondary victimisation of children and seriously hampers their right to access the formal justice system as well as their future development.

---

<sup>172</sup> Although there is no legislation, the MSS has developed Standard Operating Procedures on the establishment and management of safe houses and shelters for victims of gender based violence with support from international aid agencies; however, as far as JSMP could gather, the social services do not currently comply with these procedures. See, Ministério Solidariedade Social, *Orientasaun Técnica: Estabelesimentu no Jestaun (Sentru Resepsaun no Uma Mahon ba Vitima VBJ)*.

### **Summary of issues affecting appropriate sentencing and remedy in cases involving child victims:**

- Inconsistent interpretation of legal provisions on sentencing and mitigating circumstances in criminal cases;
- Unregulated consideration of traditional justice mechanisms;
- Civil proceedings regarding children's future are not initiated concurrently with criminal proceedings;
- Removal of child victims from families and placement in alternative care institutions with no judicial involvement or supervision;
- Unregulated role of alternative care institutions sheltering children.

## 3.2. Children in Conflict with the Law

As noted at the beginning of section 3, few criminal cases involving children as perpetrators reach the courts. During just over one year of monitoring in all four district courts, JSMP did not come across a single criminal trial involving a minor as a perpetrator. It should be noted that only children aged between 16 - age of criminal responsibility<sup>173</sup> - and 17 - age of majority<sup>174</sup> - can be prosecuted. This narrow time span would also contribute to a low number of criminal trials involving minors as perpetrators. Children in conflict with the law under the age of criminal responsibility cannot be criminally prosecuted.

### ***Who are the children in conflict with the law in Timor-Leste?***

A 2012 assessment of juvenile justice conducted by UNICEF<sup>175</sup>, found that cases of children in conflict with the law usually involve **teenage boys**. It is common for children to commit crimes together with other children or adults.

More recent cases recorded by the VPUs and OPLs and interviews with stakeholders continue to confirm these trends.

Statistics on children in conflict with the law are even more scarce and inconsistent than those on child victims. A strong preference for customary or informal resolution - which interviews have indicated is fostered by the authorities - means that cases are rarely processed by the formal justice system. This is particularly true for less serious crimes as most recorded cases relate to serious crimes such as homicide and sexual abuse. Due to

<sup>173</sup> Article 20 of the Penal Code.

<sup>174</sup> Article 118 of the Civil Code.

<sup>175</sup> UNICEF, *Timor-Leste Juvenile Justice Assessment & Strategy Paper*, 2012

this lack of information it is very difficult to determine the real incidence, trends and the ways in which crimes perpetrated by children are handled. However, some conclusions can be drawn from the data that is available, and from interviews with stakeholders in the justice sector and child protection.

According to international standards, juvenile justice should be based on two pillars: welfare care and criminal policy.<sup>176</sup> In Timor-Leste, there are no institutions, legislation or policies designed to deal with the matter of juvenile justice. These huge gaps in the justice sector mean that, in effect, Timor-Leste does not have a juvenile justice system and seriously fails to meet international standards in this area of children's justice.

Firstly, in relation to welfare care, as discussed in previous sections, the social services are critically understaffed and have little capacity, which limits the availability of welfare care services in Timor-Leste. Poor institutional cooperation between social services and the judiciary also needs to be strengthened and better defined through clear procedures in order to establish a juvenile justice system.

The MSS's National Directorate for Social Reinsertion has a department dedicated to juvenile justice, the Juvenile Justice Department. This department is mandated to "support and follow-up young people that have committed a crime, in coordination with the Ministry of Justice".<sup>177</sup> However, this coordination is not yet institutionalised. In addition, this department is currently not able to perform its mandate as it lacks the necessary staff, resources and capacity. In December 2013, the Juvenile Justice Department had only two staff members. Alternative care institutions sheltering children in conflict with the law placed there by the MSS reported that they had not had any contact with the MSS regarding those children in months; a clear indication that MSS is failing to meet its mandate.

Poor data collection and case recording is also an issue affecting the MSS's work in the area of children in conflict with the law. In 2012 and 2013, the Juvenile Justice Department recorded 155 cases of children in conflict with the law.<sup>178</sup> However, these numbers may be misleading due to, among other issues, inconsistencies with existing legislation on the age of majority, as 17 and 18 year-olds are considered minors for the purpose of these records. In addition, like some police statistics provided to JSMP mentioned in previous sections, the MSS does not record crimes perpetrated by children in a way that is consistent with the

---

<sup>176</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); adopted by General Assembly resolution 40/33 of 29 November 1985.

<sup>177</sup> Article 10/2/c) of the Decree-Law No. 47/2012 of the 5<sup>th</sup> of December (*Organic Law of the Ministry of Social Solidarity*).

<sup>178</sup> Data provided to JSMP by the MSS in May 2014.

relevant provisions of the Penal Code. These records also reveal that the support provided to children in conflict with the law by the MSS is limited to financial support.

As for criminal policy, the 2010 Strategic Plan for the Justice Sector recognised the need for the creation of a legal framework and specialised structures in order to establish a juvenile justice system. However, as discussed in section 2.2, although draft laws have been developed and received support from international aid agencies, juvenile justice laws are yet to be passed and specialised structures and services are yet to be created. In addition, there is not any specific legislation on special penalties for youth offenders aged 16 to 21, as provided by the Penal Code<sup>179</sup>, which would also apply to minors aged 16.

Concerning children in conflict with the law under the age of criminal responsibility, the gap in legislation is even greater. There is no legislation applicable to children in conflict with the law under the age of criminal responsibility. Such children should primarily be treated as children at risk and be dealt with mainly through approaches focusing on child protection and rehabilitation, while processing through the criminal justice system should not be a primary solution.<sup>180</sup> Comprehensive legislation on child protection could contribute to fill this gap and provide legal tools and guidance to the social services on how to deal with such cases.

In addition to these extensive gaps in legislation, there are also no operating procedures or guidelines on how to handle cases of children in conflict with the law that could guide the police force and the social services. Such procedures or guidelines could help mitigate the negative effects of the current legislative void and lack of specialised staff.

*"There are no rules on how to deal with minors that commit crimes so we just solve these cases ourselves based on our own experience."*

- VPU Officer<sup>181</sup>

Due to this lack of legislation and operating procedures, police officers and other judicial actors deal with children in conflict with the law by resorting to their own experience, instinct, customary practices of mediation, or adult criminal law procedures.

Judicial actors interviewed by JSMP explained some of the *solutions* they use to deal with cases of children in conflict with the law in their jurisdictions. These solutions mainly consist of:

---

<sup>179</sup> Article 20 of the Penal Code specifically references the fact that this issue will be governed by specific legislation.

<sup>180</sup> The matter of how to handle cases of children in conflict with the law under the age of criminal responsibility is controversial in many countries, however, there is some consensus that the focus should be on rehabilitation and protection. See, for instance, The Howard League for Penal Reform, *Punishing children - A survey of criminal responsibility and approaches across Europe*, 2008; and UNICEF Office of Research, *Juvenile Justice*, Innocenti Digest, Vol. 3, 1998.

<sup>181</sup> Interview conducted on 20.11.201.

- talking to the parents and asking them to discipline the child in cases of petty offences;
- asking the local community leaders to intervene and mediate resolution between the child, the victim and both their families;
- removing the child from his/her community and placing him/her in a shelter or alternative care institution whenever the child's safety might be in danger of facing reprisals from the community;
- removing the child from his/her community and sending him/her to a religious institution whenever the child's family was perceived as not being capable of "giving moral principles" to the child.

These **measures are implemented in an informal way with no official judicial oversight**, and children placed in institutions often remain there indefinitely. As previously mentioned, very few cases are recorded by the police and the social services do not always involve judicial authorities. As a result, even in cases involving children who have reached the age of criminal responsibility, it is rare that cases of children in conflict with the law ever reach the formal justice system. With no consistent records and no follow-up of children placed in these institutions, the PNTL and the MSS can easily lose track of the children.

In addition to the lack of legislation and policies, there is also widespread confusion about age provisions among both judicial officers and social services officers. For instance, a significant number of the officers interviewed by JSMP confused the age of majority with the age of criminal responsibility. The concepts of minor and youth are also often confused.<sup>182</sup> This is likely the reason why the MSS's Juvenile Justice Department records cases involving perpetrators aged 17 and 18 as cases of children in conflict with the law.

Based on JSMP's research on issues affecting investigation and prosecution in cases involving child victims, it is expected that the issues affecting investigation and prosecution in cases involving child victims that were explained in the previous section also affect the few cases of minors in conflict with the law that are processed by the formal justice system.

This situation is worrying as it can easily give rise to human rights violations. Indeed, this state of affairs denies children in conflict with the law the right to access justice, the right to a fair trial, the right to be rehabilitated and reintegrated in society and the right to be protected from harm.

---

<sup>182</sup> According to criminal law, youth offenders refers to offenders between the ages of 16 and 21; this includes 16 year old minors that are already criminally liable. The concept does not coincide with the legal definition of a minor, which refers to anyone under de age 17.

Children's rights cannot be fully realised without a juvenile justice system and a functioning child protection system that can deal with both criminally responsible and not yet criminally responsible children in conflict with the law in a way that the principle of the best interests of the child is a primary concern. Case Study 4 is illustrative of the vulnerable situation that children in conflict with the law can find themselves in and of how their rights are not respected.

#### **Case Study 4: Child in conflict with the law placed in a shelter<sup>183</sup>**

##### ***Ricardo's story***

*Ricardo is a 17 year old boy from a village two hours from Dili who currently lives in an alternative care institution hours away from his village. Last year, when Ricardo was still 16, while sitting with some classmates from school, he pushed one of the boys and the boy fell to the ground. One month later, the boy suddenly fell sick and died a few days afterwards. The doctor at the hospital said that the boy died due to an illness unrelated to falling that day, but people in Ricardo's village said that his family was a family of witches and were convinced that the boy's death was caused by a spell that Ricardo put on the boy when he pushed him a month earlier.*

*Shortly after the boy died, Ricardo and his family started receiving death threats. They called the PNTL several times but no one ever came. Ricardo's older sister decided to take him to the nearest town's PNTL station. That was when the PNTL took him to the shelter where he currently stays. His parents slept outside the PNTL station because they were afraid people might burn their house during the night.*

*It has been almost a year since Ricardo arrived at the shelter and he has since turned 17 and is no longer a minor. After a few months living at the shelter, the PNTL came and took him to see a public prosecutor. The prosecutor was a nice man and told him that he was accused of a crime for causing his classmate's death. Ricardo never met with a public defender and doesn't know that he has the right to free legal aid. Nobody explained to him what is going to happen next and he doesn't know whether or not he is going to court. Nobody from the MSS ever came to see him.*

*Last month, the PNTL came to the shelter and took a boy who also lived in the shelter because he had had "problems with the justice" to Becora prison. Ricardo is afraid that the same thing might happen to him.*

---

<sup>183</sup> This case study is based on an interview with a child in conflict with the law in January 2014.

*Ricardo doesn't know for how long he will stay in the shelter but is happy to stay for as long as the shelter's staff allows him to because he feels safe there. Once, the shelter organised a visit from his family and Ricardo was happy because he missed them. However, he is worried about his family and would like to go back to school.<sup>184</sup>*

Knowing that cases of children in conflict with the law are rarely recorded by the judicial authorities, the few existing statistics cannot be seen as reliable sources from which to draw conclusions on the incidence of crimes perpetrated by minors. However, the perception of most stakeholders interviewed by JSMP is that crimes perpetrated by minors are a growing problem.

A number of the people interviewed by JSMP reported that there is a significant incidence of crimes committed by children. In particular, physical assault and damage to property crimes were reported to be common, especially in the context of martial arts gangs and other organised groups.<sup>185</sup>

Sexual abuse perpetrated by children against younger children has also been pointed out as a problem. This issue has been the subject of studies in the past.<sup>186</sup> However, anecdotal evidence and internal records of NGOs working in the area of victim protection and health constitute the main source of available data in this area (see Figure 27 for an example of such data). The frequent exposure to sexual violence in the home and the wide dissemination of, and easy access to, pornographic material have been pointed to as the main causes of violent sexual behaviour among children. Further research on this issue is needed in order to understand the real dimensions of the problem and develop possible strategies to tackle it.

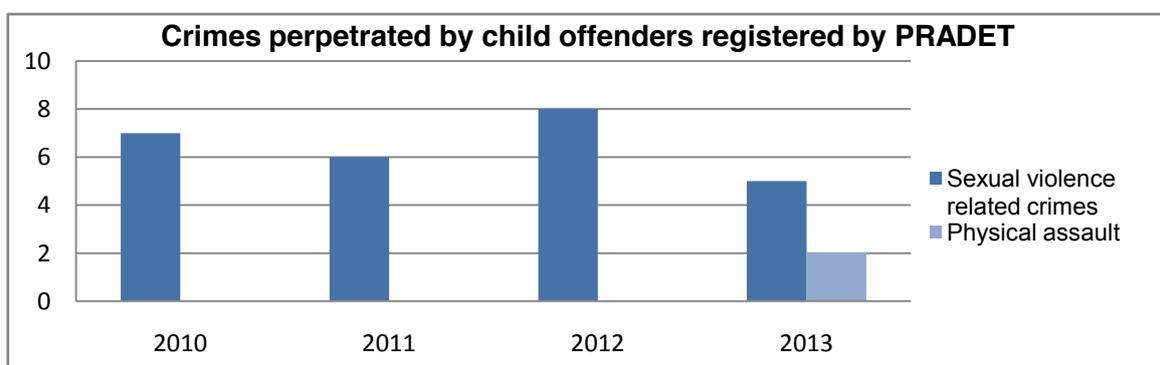


FIGURE 27 - CRIMES PERPETRATED BY CHILDREN REGISTERED BY PRADET(2010 TO 2013) - INTERNAL STATISTICS PROVIDED IN FEB 2014

<sup>184</sup> The shelter's staff explained to JSMP that bureaucratic difficulties with school transfer and safety concerns prevented the boy from attending school.

<sup>185</sup> This was mentioned by judicial actors in the jurisdictions of Dili and Suai.

<sup>186</sup> Asia Pacific Support Collective Timor-Leste (APSCTL), *Baseline Study on Sexual and Gender-Based Violence in Bobonaro and Covalima*, 2009.

Regarding minors detained in prisons, there is not a high incidence of cases. As was mentioned in section 2.2, after the entry into force of the Penal Code, the number of detained minors seems to have dropped dramatically. In April 2014, there was only one minor detained in the Becora prison.<sup>187</sup> However, two other younger offenders were minors when they were first admitted.<sup>188</sup> According to the statistics provided by the prison, one of them has been preventively detained since 2006.<sup>189</sup>

The analysis of the statistical information provided by the Becora prison reveals difficulties in age determination of juvenile offenders. 13 out of 24 detained young offenders are registered as having been born on the 1<sup>st</sup> of January. This indicates that the age of these offenders was approximately determined which leaves room for error. Again, accurate birth registration proves to be a persistent problem that hampers children's access to justice in Timor-Leste.

During preventive detention, children in conflict with the law barely have any contact with public defenders. Public defenders interviewed by JSMP did not understand their obligation to assist and inform detained children in conflict with the law. This denial of legal assistance is a serious violation of human rights.

In relation to the detention of minors in itself, there is no true separation of children and adults at the Becora prison. Currently, the prison has a separate block for youth - detainees aged 16 to 21. This division of inmates is likely based on article 20/2 of the Penal Code that provides that young people between 16 and 21 should enjoy special provisions regarding the application and execution of criminal penalties. However, this cannot justify the non separation of underage and adult detainees which can compromise the rehabilitation of detained children in conflict with the law. Specialised detention facilities for children in conflict with the law that can focus on interventions based on their right to be rehabilitated and on their right to education are needed.<sup>190</sup>

**Summary of issues affecting appropriate treatment of children in conflict with the law by the formal justice system:**

- Lack of legislation on juvenile justice;
- Lack of child protection legislation applicable to children in conflict with the law under the age of criminal responsibility;

<sup>187</sup> JSMP has not found evidence of detained underage girls at Gleno prison.

<sup>188</sup> Statistics on "List of youths detained at the Becora prison" provided by Becora Prison in November 2013 and in April 2014 by *Forum Tau Matan*.

<sup>189</sup> In this particular case, preventive detention was applied as a security measure.

<sup>190</sup> According to Timor-Leste's provisions on the age of majority (17 years) and the age of criminal responsibility (16 years), a criminally responsible minor is a 16 year-old.

- Removal of children from families and placement in alternative care or religious institutions with no judicial oversight;
- Lack of accurate statistics on children in conflict with the law that can allow a better understanding of this matter in Timor-Leste;
- No effective legal aid and assistance of detained children in conflict with the law;
- No separation of underage detainees and adult detainees;
- Lack of birth registration documents.

### 3.3. Children Involved in Civil Proceedings

Most civil legal matters that can involve children are currently regulated by the Civil Code. However, despite regulating a broad range of issues, including issues affecting children's lives, the Civil Code is not widely implemented. Interviews with key stakeholders and court monitoring suggests that this is mainly due to two factors: a lack of knowledge regarding the law and a strong preference for traditional justice mechanisms. The combination of these two factors results in the Civil Code seldom being directly applied because civil disputes are rarely brought before a court. In fact, the formal justice system plays a subsidiary role when it comes to settling civil disputes. For such disputes, people prefer to resort to traditional dispute resolution mechanisms rather than to the formal justice system.<sup>192</sup> These traditional customary law practices are recognized in general by the Constitution. However, there is no detailed regulation by law, written procedures or enforcement mechanisms. Like in criminal cases, this failure to apply civil law and use of unregulated traditional resolution mechanisms is not without consequences, particularly for vulnerable groups such as children. For instance, informal adoptions

JSMP's court monitoring has shown that that in some cases courts also rely on customary mediation mechanisms in civil matters as a substitute for judicial involvement. For example, in one criminal case of sexual abuse of a child<sup>191</sup>, the judge discouraged the victim and her family from seeking civil compensation through the courts and advised them to take the matter of compensation to the traditional authorities.

<sup>191</sup> Case no. 70/2013/TDD.

<sup>192</sup> This issue has been widely documented by a range of agencies; see, for example, *'Traditional' Justice Systems in the Pacific, Indonesia and Timor-Leste* for the 2009 UNICEF Justice for Children in the Pacific, Indonesia and Timor-Leste, EAPRO Sub-Regional Workshop.

arranged through customary mechanisms cannot be legally recognised and lack the child protection measures provided in the Civil Code. Other examples include informal child support and inheritance arrangements which follow customary rules that lack legal recognition and therefore cannot be judicially enforced. The systematic use of traditional justice mechanisms in civil disputes can leave children in a situation of complete vulnerability to sometimes arbitrary decisions on matters that can greatly influence their lives.

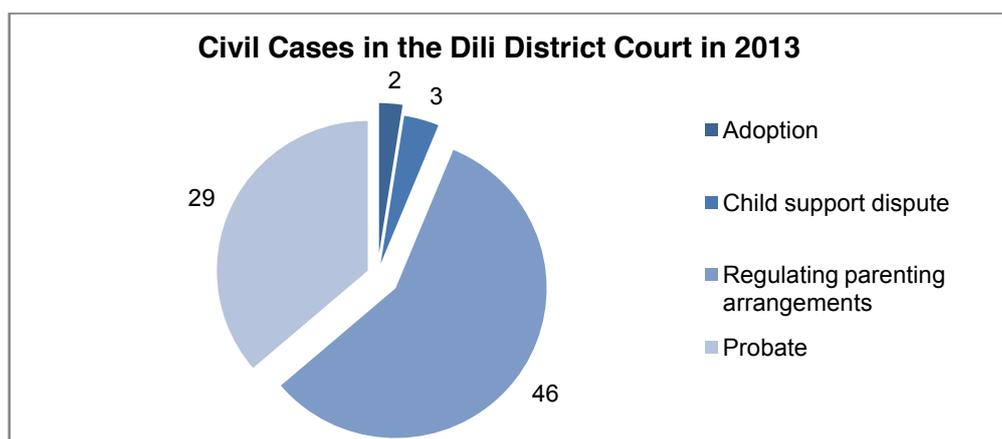


FIGURE 28 - CIVIL CASES INVOLVING CHILDREN IN THE DILI DISTRICT COURT IN 2013 - STATISTICS PROVIDED BY THE DILI DISTRICT COURT IN JANUARY 2014

Most civil cases involving children in the Timorese courts are cases related to parenting arrangements, child support and custody disputes. Statistics from the Dili District Court also reveal that a significant number of probate proceedings involve children, usually as heirs. Due to the technical and financial nature of the proceedings, in probate cases children do not normally directly intervene.<sup>193</sup> However, even in these cases, the best interests of the child should always be a guiding principle.

JSMP's court monitoring of civil cases involving children - as plaintiffs or rights bearers - focuses on civil disputes that directly involve children, such as child support disputes and law suits on the regulation of parenting arrangements.

Of all these civil cases, the majority never reach public hearing phase and are settled in pre-trial conference.<sup>194</sup> This is reflected in the number of civil proceedings involving children monitored by JSMP - it is a small number when compared to the total number of civil proceedings.

<sup>193</sup> Article 848 of the Civil Procedure Code.

<sup>194</sup> This is in accordance with special proceedings provided in the Civil Procedure Code for divorce and alimony proceedings - articles 828, 829 and 832.

Civil proceedings involving children monitored by JSMP	
Regulating parenting arrangements and child support disputes	6 cases
Child custody dispute	1 case

FIGURE 29 - CIVIL PROCEEDINGS INVOLVING CHILDREN MONITORED BY JSMP - JSMP COURT MONITORING STATISTICS (MAR 2013 - APR 2014)

JSMP has observed that children are usually not present in court hearings but that, when deemed old enough, their evidence will be heard by the judge prior to the hearing and in a less intimidating setting. This practice is in accordance with international standards and best practices for child justice.<sup>196</sup>

However, in other types of cases such as adoption, children's participation does not seem to be guaranteed. Indeed, there seems to be little understanding on the part of judicial actors about when or if it is appropriate to hear from children. Legal provisions on child participation are also often misinterpreted. For instance, article 1860 of the Civil Code on the necessity of hearing and obtaining the consent of a child older than 12 years of age before he/she is adopted, is sometimes interpreted as a prohibition for hearing a child younger than that age. Guidelines on child participation in civil court cases would be useful to tackle these misinterpretations and to better promote children's right to participate in proceedings directly affecting their lives.

*"In adoption cases, we sometimes hear children younger than 12 even if the law forbids it."*

- Public defender<sup>195</sup>

Most of the monitored cases had been preceded by divorce suits and were initiated by the public prosecutor's office on behalf of the children. Other cases were preceded by the parents' *de facto* separation.

The statistics provided by the Dili District Court reveal a steep increase in the number of cases on the regulation of parenting arrangements.

<sup>195</sup> Interview conducted on 21.11.2013.

<sup>196</sup> Office of the Secretary-General, *UN Approach to Justice for Children*, 2008.

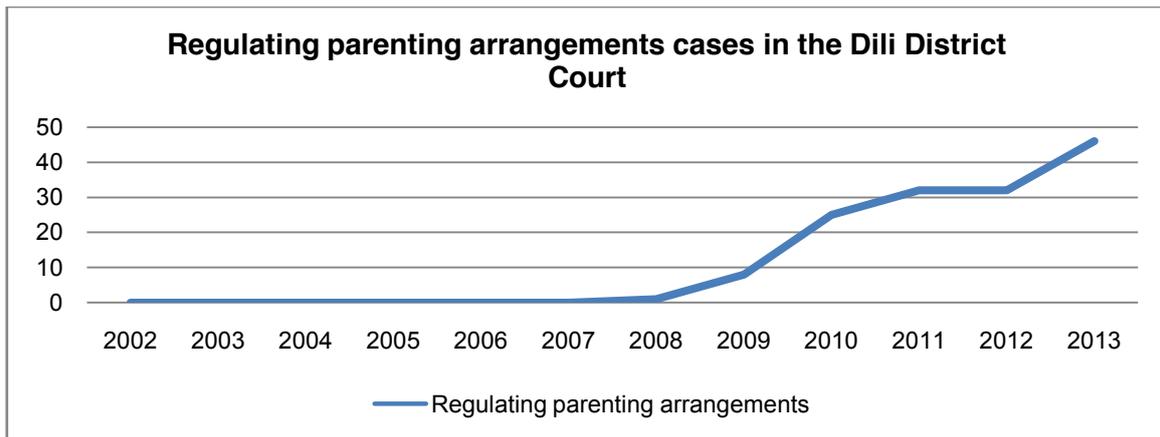


FIGURE 20 - REGULATING PARENTING ARRANGEMENTS CASES IN THE DILI DISTRICT COURT (2002-2013) - STATISTICS PROVIDED BY THE DILI DISTRICT COURT IN JANUARY 2014

This steep increase in parenting arrangements is likely a consequence of an improved awareness of the law and of the formal justice system in general. However, JSMP has observed that the people accessing the courts for this type of civil dispute come from comparatively privileged socio-economic backgrounds. This indicates that greater efforts are needed to raise awareness amongst more disadvantaged community members of the law and how the formal justice system can be used to settle civil disputes.

The tendency of more disadvantaged groups in Timorese society to settle civil matters through traditional justice mechanisms means that often the solutions reached are not legally recognised. For instance, the non-recognition by the legal system of informal adoption can hamper children's access to inheritance rights and pensions.

There are also a number of paternity case investigations in the Dili District Court's records. A significant number of such cases have also been reported in the Oecusse District Court jurisdiction, however JSMP has not been able to confirm this through statistical data. Such cases tend to suffer long delays as there is no DNA testing available in Timor.<sup>197</sup>

In relation to adoption, the statistics provided by the Dili District Court show that there has been a steady decrease in the number of adoption cases over the past ten years, although overall, the numbers have been consistently low. There is a gamut of reasons that contribute to downwards and upwards trends in international and domestic adoption, and it is difficult to attribute specific reasons to the trend in Timor Leste without statistics which differentiate the numbers of domestic and international adoptions, and proper analysis of the conditions affecting domestic adoption in Timor-Leste. Considering Timor-Leste's vulnerability to human

<sup>197</sup> Some judicial actors have told JSMP during interviews for this research that sometimes DNA samples are sent abroad for testing, however it was not clear how often this service is available.

trafficking<sup>198</sup> and the risk of fraudulent domestic and international adoption in countries with low rates of birth registration, specific research should be conducted on this issue. Further, more resources and efforts should be allocated to approving implementing legislation on adoption procedures to give full effect to the provisions contained in the Civil Code, and to strengthening the Timorese institutions responsible for international adoption in line with the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.<sup>199</sup>

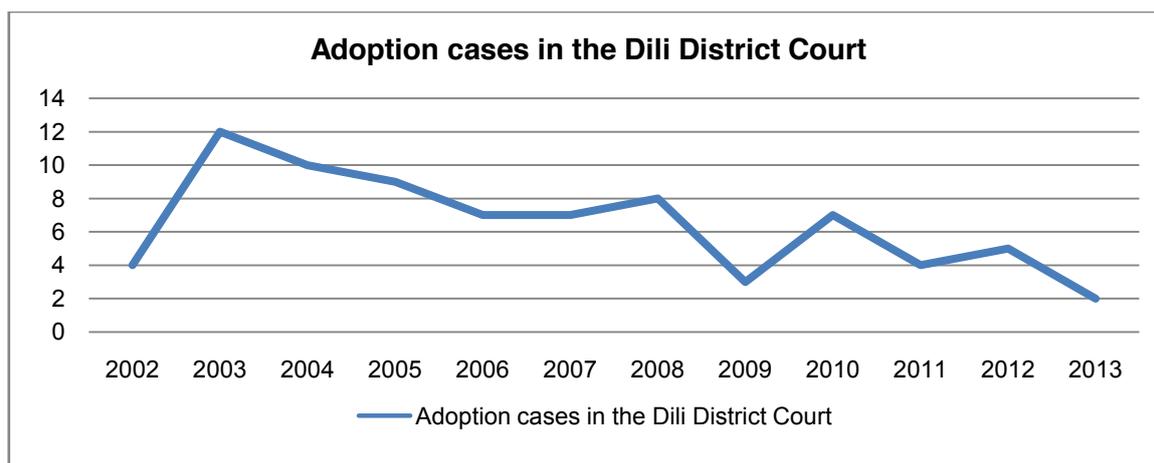


FIGURE 31 - ADOPTION CASES IN THE DILI DISTRICT COURT (2002-2013) - STATISTICS PROVIDED BY THE DILI DISTRICT COURT IN JANUARY 2014

Like in criminal cases, the involvement of the social services is also quite limited in civil disputes involving children. Again, there are some dedicated departments in the MSS for these sorts of matters, such as the department dedicated to dealing with adoption, but they are critically understaffed.

One striking absence in the statistics provided to JSMP by Timorese institutions is that of civil proceedings relating to the removal of custody/parental authority from abusive or negligent parents. As discussed in section 3.1, currently such proceedings are never initiated concurrently with criminal proceedings on crimes<sup>200</sup> perpetrated against children by close relatives. Despite being legally bound to initiate such proceedings<sup>201</sup>, public prosecutors interviewed by JSMP saw this matter as being outside their competence. In cases of child abuse where children have been removed from their families and placed in alternative care institutions but proceedings regarding custody and parental authority have not been initiated,

<sup>198</sup> See, for instance: US Department of State, 2013 Trafficking in Persons Report, 2013. Available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215634.htm#> (last accessed in April 2014).

<sup>199</sup> Ratified by Timor-Leste in 2009 (Resolution of the National Parliament No. 28/2009 of the 9<sup>th</sup> of September).

<sup>200</sup> However, there doesn't necessarily have to be a crime for such procedures to be initiated; these provisions apply in all cases where the child's safety, health, moral formation, or education are in danger (article 1800 of the Civil Code).

<sup>201</sup> The Civil Code's articles 1797 and 1800 provide that public prosecutors have the responsibility to bring such matters to the attention of a court.

in addition to the issues already discussed in section 3.1 that these situations may cause, shelters and alternative care institutions are left legally powerless to protect children under their care. That is, if the removal of a child from his/her family has been done informally with no judicial endorsement, the institutions in which the child has been placed will have no legal relationship with the child under their care and cannot legally deny abusive parents who reclaim custody of their child.

This situation leaves child victims vulnerable to further abuse and secondary victimisation, and alternative care institutions legally powerless to protect them and act in their best interests. Training for public prosecutors in this area should be considered by the Office of the Prosecutor General to tackle this issue because it seriously hampers children's right to protection and their access a formal justice system that is fair to children.

**Summary of main findings on the involvement of children in civil proceedings:**

- Low degree of implementation of the Civil Code;
- Preference for customary mediation in family related disputes;
- Poor understanding by court actors of applicable legislation;
- Lack of specific legislation on matters such as adoption;
- Lack of human resources assigned to deal with matters specific to children such as child support and adoption;
- Absence of any civil proceedings on the custody of children victim of crimes.

## 4. Conclusions

For most Timorese children, guaranteed access to the formal justice system is simply not a reality. There are a number of structural and cultural obstacles to children's access to the formal justice system in Timor-Leste. The combination of these factors makes the formal justice system unfriendly, sometimes even hostile, towards children. The way in which criminal investigation and other judicial proceedings are carried out in cases involving children is often inappropriate and does not respect children's most basic rights. Without adequate child protection measures put in place in the justice sector and without a functional child protection system, it is difficult for children to access the formal justice system.

Moreover, when children (or someone acting on their behalf) manage to overcome some of these obstacles, raise their complaint with formal authorities, and have their case heard by the formal justice system, their expectations of justice are often left unmet, with either no result or a result that is far from satisfactory.

Understaffed and lacking appropriate expertise and resources, the formal justice system is widely ineffective: the legal framework applicable to children suffers from extensive gaps, criminal investigations are frequently flawed, social services and child protection measures are for the most part unavailable, prosecution is often technically inconsistent, legal counsel and defence is usually unavailable, cases can take years, court sentences can be inadequate and monitoring of a child's situation after the conclusion of a court matter is non-existent. The combination of these factors makes the Timorese formal justice system generally incapable of fulfilling children's right to access justice.

Below is an overview of this research's main findings on children's access to the formal justice system in Timor-Leste.

### - Crimes of violence against children are the most common cases involving children brought before the courts

In Timor-Leste, most criminal cases involving children that reach the courts concern crimes of sexual and physical violence against children. In fact, the large **majority of criminal cases involving children brought before the courts are cases of sexual abuse of minors**. The children victim of such crimes are mostly young girls and the perpetrators are often someone that the child knows. Sexual violence in the home, including incest, is a significant concern.

Considering that crimes perpetrated against children are suspected to be widely underreported, the high proportion of such cases in court is a probable indicator of an also high incidence of violence against children. Cases reaching the formal justice system concerning crimes of physical and sexual violence against children are likely to represent only a small portion of the actual number of cases.

#### - Extensive gaps in legislation and poor implementation of existing provisions

The most evident legislative gaps concerning child justice are the **absence of legislation on children in conflict with the law** - both for those children criminally responsible and those under the age of criminal responsibility - **and on child protection**. Without such legislation, the formal justice system and the social services have no legal tools to deal appropriately with children at risk. Currently, with no formal juvenile justice system and no child protection system, State authorities have little choice: they either do not take action, or they independently seek alternative ways to deal with situations of children at risk. Such alternatives often violate children's rights and may lead to secondary victimisation of children that come into contact with the formal justice system.

Other legislative gaps include:

- the lack of comprehensive provisions on child specific protection measures applicable during judicial proceedings, which could create the framework for a more child friendly justice system;
- the absence of a specific incest provision in the Penal Code;
- the lack of legislation establishing in law current *de facto* actors in child protection, such as the VPU and the CPO, which could provide them with the necessary legal authority to better protect children at risk;

Poor implementation of existing legislation is also an obstacle affecting children's access to formal justice. The legal framework applicable to children is not well understood by judicial actors which results in either **provisions not being applied or being misinterpreted**.

#### - Lack of quality specialised structures and staff for children's issues

State structures specialising in child justice and child protection are insufficient or, in some cases, non-existent. For instance, there are no courts specialising in child justice which means cases involving children are tried by general courts of law. With little awareness of, or sensitivity to, children's needs, **there is little difference between the way courts proceed when dealing with cases involving adults and those involving children**.

In addition, the police force, the public prosecutor's office, the public defender's office, the courts and the social services lack enough officers with sufficient knowledge of child justice and child protection. JSMP court monitoring and interviews with judicial actors revealed that they often lack knowledge and understanding of the existing legal framework. Even if all the necessary legislative tools, regulations and formal procedures are put in place, their successful implementation would be extremely challenging without recruiting additional staff, and providing further training to existing staff.

Most service providers within the formal justice system have wide areas of responsibility, but their services seem to be concentrated in district capitals. This, and the remoteness and isolation of many Timorese communities, mainly caused by the lack of public transport and poor roads, makes existing State structures effectively inaccessible to the children living in those communities.

#### **- Poor coordination between child protection actors and understanding of the formal justice system**

JSMP's research has revealed that poor coordination between relevant actors in child protection is a significant obstacle to the realisation of children's access to formal justice in Timor-Leste. In particular, judicial authorities and the social services tend to work separately. Poor coordination and communication between these actors result in children not accessing a multidisciplinary approach that would address their needs concerning both legal remedy and welfare support.

In addition to a lack of quality specialised structures and staff for children involved in the justice system, there is a poor understanding of the legal system and the role of the judiciary, including by some actors involved in child protection. This is one of the causes for poor coordination and communication between child protection actors.

The formal justice system and the social services need to be capacitated to effectively understand each institution's role and responsibilities and work in a collaborative way.

#### **- Preference for traditional justice**

In interviews conducted for this report, JSMP found that the ineffectiveness of the formal justice system and the community's limited understanding of formal justice have resulted in a preference for traditional justice resolution mechanisms. During interviews, many reasons were provided for this preference, including cost (traditional justice is perceived as less costly), accessibility, promptness and maintenance of social harmony. This preference also applies in cases involving children as they typically involve abuse and neglect within the

child's family or community, and are seen as affecting social harmony in the community. Further, JSMP court monitoring has shown that it is not uncommon for cases brought before the court to have already gone through traditional justice resolution mechanisms.

Frequent resort to traditional justice mechanisms results in children's rights being violated in a variety of ways. The fact that traditional justice mechanisms are often the only accessible resolution mechanisms is in itself a violation of children's rights.

#### **- Minimum international standards on child justice are not met**

Overall, most of the internationally recognised minimum standards for child justice are currently unmet in Timor-Leste. Minimum standards such as having in place a specialised judicial system for children in conflict with the law or actively promoting child victims' recovery are far from being met given the gaps in Timor-Leste's legislation and lack of both specialised structures and staff with expertise in child justice and child protection. Indeed, despite having ratified the CRC more than ten years ago, little has been done to implement the Convention's provisions. Activities to further the realisation of children's rights included in the Government's own Strategic Plan for the Justice Sector have so far been limited in their implementation.

Greater efforts are needed to make the Timorese formal justice system fairer and more accessible to children. The formal justice system must be better able to effectively protect and deliver justice to children that come into contact with it.

## 5. Recommendations

Building a strong and functional formal justice system is a long-term endeavour. As a new nation, Timor-Leste faces additional challenges when it comes to building a functional formal justice system that is fair, accessible to all and well adapted to the Timorese social and cultural context. In order to achieve that goal, it must also be accessible and fair to children. Creating a formal justice system that is accessible to children requires measures which ensure that: (1) children are treated in a way that takes into consideration their special needs and evolving capacities; (2) children can participate and contribute to the judicial proceedings in which they are involved; and (3) the best interest of the child is always the primary concern.

### 1. Understanding and documenting the children's rights situation in Timor-Leste

1.1. Information on the children's rights situation in Timor-Leste is scarce. Although there are many well-known problems affecting children, including their right to access justice, there is little documentation. **It is recommended that the Government conduct research on the children's rights situation in Timor-Leste, possibly in partnership with relevant international organisations.** A deeper understanding of the specific situation of children is necessary to tackle the problems affecting children in Timor-Leste.

1.2. Considering that there has been little or no follow-up of identified cases of children at risk, **it is recommended that the Ministry of Social Solidarity and police force conduct a comprehensive review and follow-up of all the registered cases of children at risk, including those placed in institutional care, as well as an audit of alternative care institutions to identify and follow-up on cases that have not been registered.**

1.3. There is currently no coherent and systematic data collection system on cases of children at risk by the justice system or social services which makes inter-institutional cooperation and follow-up of cases more difficult. **It is recommended that the Ministry of Justice and the Ministry of Social Solidarity establish a procedures on information sharing on identified cases of children at risk, and that judicial institutions consistently use the IIMS to the greatest degree possible.**

### 2. Improving coordination between actors in child protection

2.1. Guaranteeing children's right to access justice is a multidisciplinary task that requires cooperation and effective communication among several actors. Coordination and cooperation between relevant actors should be formalised. **It is recommended that the**

**Ministry of Social Solidarity and the Ministry of Justice jointly adopt and implement standard formal procedures on reporting and cooperation between partner institutions in child protection**, namely the PNTL, the public prosecutors, the courts, the MSS and any actively involved non-governmental partners. Implementation of such procedures should involve training of relevant officers.

2.2. With appropriate legal standing and resources, district Child Protection Networks have the potential to become central sources of information on cases of child abuse and juvenile delinquency. **It is recommended that the Ministry of Social Solidarity and the Ministry of Justice jointly regulate the functions, participants and reporting duties of these networks.**

### 3. Developing child justice related legislation and formalising the child protection system

3.1. Considering the amount of time and resources already spent in the production of legislation with few or poor results, **it is recommended that the Government concentrate its efforts on producing and enacting legislation on child protection that is directly implementable and well-adapted to the Timorese context.** Some existing drafts, such as the draft of a child rights code, focus on restating general principles and values already in force in the Timorese legal system through the ratification of international conventions rather than the implementation and realisation of such principles.

3.2. Legislation on children in conflict with the law is needed. **It is recommended that the Government, through the Ministry of Justice, conducts an in-depth review of the existing draft legislation on children in conflict with the law to enact legislation more suitable to the Timorese context.** This review and enactment should be done in coordination with the production of child protection legislation.

3.3. Considering the recurrence of sexual violence crimes perpetrated against children within the family reaching the courts, specific criminal provisions on incest that can address this problem are needed. **It is recommended that a specific crime of incest that applies irrespective of the victim's age and does not require proof of lack of consent be incorporated into the Penal Code.**

3.4. Considering the scarcity of provisions on child protection measures for judicial proceedings, **it is recommended that measures guaranteeing children's protection from harm and their participation in judicial proceedings are incorporated in relevant**

**procedural legislation**, such as the Penal Procedure Code or any future child protection and juvenile justice legislation.

3.5. Taking into account the fragile and informal standing of the VPU despite its central role in child justice and protection, **it is recommended that the Government, through the Secretary of State for Security, formally establishes the VPU in law and implement regulations regarding VPU officers' role, responsibilities, reporting duties, training and rotation.**

3.6. As with the VPU, despite its important role in child protection, the CPO has a fragile and informal status. **It is recommended that the Government, through the Ministry of Social Solidarity in cooperation with justice sector institutions, formally establish the CPO in law and implement regulations regarding the CPOs' role, responsibilities, reporting duties and training.**

3.7. Organisations providing institutional care for children are currently unregulated, which can pose great risks for children's safety and wellbeing. **It is recommended that the Ministry of Social Solidarity, in cooperation with justice sector institutions, establishes in law the role of shelters and other institutional care facilities for children and regulates the certification and monitoring of these institutions.**

3.8. Although the Civil Code already sets out the general principles and rules that guide the adoption of children, concrete implementation of these provisions is needed. **It is recommended that the Government, through the Ministry of Justice in cooperation with relevant actors in child protection, produces and enacts implementing legislation to establish procedures and institutional responsibilities for both national and international adoption.**

3.9. Considering that currently there is no systematic registration of births, deaths, marriage, divorce and adoption, **it is recommended that the Government enacts a Civil Registry Code.**

#### **4. Increasing specialisation and capacity in child justice and child protection services**

4.1. Both the justice sector and the social services lack the necessary specialised child justice and child protection services to guarantee children's right to access the justice system. **It is recommended that the Government invest more resources in establishing services specialised in child justice and child protection.** This would mean specialised judges, prosecutors and public defenders as well as social workers and counsellors; child

friendly facilities in court houses and MSS offices (such as the ones found in VPU offices); specialised rehabilitation facilities for children in conflict with the law; and certified institutional care facilities well-adapted for children.

4.2. Both the justice system and social services are critically understaffed which is a major obstacle to children's access to justice. **It is recommended that additional quality staff are recruited and trained to perform child justice and child protection related functions in all institutions relevant to children's right to access justice.**

4.3. Despite their importance, social reports on children's economic, social and family background are widely unavailable. **It is recommended that specific training on social report investigation and drafting is provided to social services' officers, in particular to the CPOs.**

4.4. In criminal cases, particularly in sexual violence crimes, evidence is often limited to the child's testimony. This is often due to delayed and poor criminal investigation, and unavailability of medical forensic services. **It is recommended that police officers and public prosecutors receive training on criminal investigation techniques and evidence collection, and that the Government invests in establishing medical forensic services beyond Dili.** Cooperation with non-governmental partners that currently perform medical forensic examinations and have expertise in this area should be formalised and strengthened.

4.5. Poor understanding of the offences contained in the Penal Code often leads to a failure to identify and misclassification of crimes, which impairs charging and prosecution. **It is recommended that basic training on the Penal Code continues to be provided and that basic information manuals are distributed to police, including community police, and social services' officers.**

4.6. Decisions in criminal cases involving children do not address concerns about child victims' safety and well-being. **It is recommended that the *Conselho Superior de Magistratura* develop guidelines on the considerations and measures to be applied in cases where children's safety and well-being are threatened.** The use of such measures should be made in coordination with the local social services and police force.

4.7. Currently, civil proceedings regarding the child victims' guardianship and future are not being initiated concurrently with criminal proceedings, to be finalised once the criminal proceedings are concluded. **It is recommended that the public prosecutors ensure that**

**any necessary civil proceedings are initiated concurrently with criminal proceedings, and that appropriate training is provided to public prosecutors to achieve this.**

## **5. Establishing monitoring mechanisms**

5.1. While there are a number of reasons why judicial actors do not fulfil their duties in the field of child justice and child protection, the establishment of new or reinforcement of existing mechanisms to monitor and evaluate judicial actors' performance, and discipline unprofessional conduct, is one way to improve this aspect of children's access to justice. **It is recommended that internal monitoring and evaluation, and disciplinary mechanisms are established, or existing mechanisms reinforced and better implemented in institutions involved in child justice and child protection.** This will improve compliance with the law, applicable regulations and guidelines relevant to the guarantee of children's right to access justice.

5.2. **It is recommended that the Government establishes the NCRC as a children's ombudsman** and adequately staffs and allocates resources for it to be able to effectively monitor children's situation in Timor-Leste. The NCRC should have institutional, financial and technical autonomy.

## **6. Assessing traditional justice in the context of children's rights**

6.1. The use of traditional justice mechanisms in children's matters is common. Currently, the court's consideration of traditional justice outcomes in formal decision-making differs greatly between cases. Judicial decisions must be clear, predictable and in accordance with the national legal system. **It is recommended that in-depth research and consultation is conducted by the Ministry of Justice in cooperation with other relevant institutions on the interaction between the formal and the traditional justice systems to inform the development of regulations governing the role of traditional justice resolution mechanisms, particularly in children's matters.**

## **7. Raising awareness of child justice matters and preventing juvenile delinquency**

7.1. Considering the seemingly high incidence of violence against children, **it is recommended that the Government engages in a national campaign condemning violence against children. This should include a component on children's rights to seek remedy through the formal justice system.**

7.2. While of unclear proportions, juvenile delinquency appears to be a growing problem, particularly in association with organised crime and sexual violence. **It is recommended**

that the Government, through joint cooperation between relevant line ministries, designs and implements a national action plan to prevent juvenile delinquency, comprising components on legal education, youth employment, sex education and other relevant topics.

7.3. It is important not to ignore the influence of traditional local and spiritual leaders. It is recommended that any information, socialisation and awareness raising initiatives actively involve local and spiritual leaders (such as the *lia-na'in*) in condemning violence against children and in promoting the realisation of their right to access justice.

## Bibliography

Asia Pacific Support Collective Timor-Leste (APSCTL), *Baseline Study on Sexual and Gender-Based Violence in Bobonaro and Covalima*, 2009

Ba Futuru, *Policy Recommendations*, Vol. 2, October 2013

Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention - Concluding Observations : Timor Leste*, 47<sup>th</sup> session, February 2008

Committee on the Rights of the Child, *General Comment No. 12 - The right of the child to be heard*, 51<sup>st</sup> session, July 2009

Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Council of Europe Publishing, Strasbourg, 2011

Grandjean, A., *No Rights Without Accountability: Promoting Access to Justice for Children*, Legal Empowerment Working Papers, Paper No. 10, IDLO, 2010

Hilker, L., Sequeira, B. and Abrantes, L., *Engaging Women in Building Peace and Security - Baseline Study: Timor Leste*, UN Women Programme: From Communities to Global Security Institutions (final report), November 2011

Judicial System Monitoring Programme (JSMP), *Incest in Timor-Leste: an Unrecognised Crime*, 2012

Judicial System Monitoring Programme (JSMP), *Law Against Domestic Violence - Obstacles to implementation three years on*, 2013

Kovar, A., *Approaches to Domestic Violence Against Women in Timor-Leste: A Review and Critique*, Human Rights Education in Asia-Pacific, Vol. 3, 2012

La Salle Institute of Governance, *Background Paper on Access to Justice Indicators in the Asia-Pacific Region*, 2003

Office of the Secretary of State for the Promotion of Equality, *National Action Plan on Gender-Based Violence*, 2012

Office of the United Nations Secretary-General, *UN Approach to Justice for Children*, September 2008

OHCHR, *Access to justice for children - Report of the United Nations High Commissioner for Human Rights*, 2014

Penal Reform International, *Protecting children's rights in criminal justice systems - A training manual and reference point for professionals and policymakers*, 2013

Streicher, *The Construction of Masculinities and Violence: "Youth Gangs" in Dili, East Timor*, 2011

*Timor-Leste Demographic and Health Survey 2009-10*, National Statistics Directorate Ministry of Finance.

The Asia Foundation, *Timor-Leste Law & Justice Survey 2013*, 2014

The Asia Foundation, *A Survey of Citizen Awareness and Attitudes Regarding Law and Justice*, 2008

The Howard League for Penal Reform, *Punishing children - A survey of criminal responsibility and approaches across Europe*, 2008

The International NGO Council on Violence Against Children, *Creating a Non-Violent Juvenile Justice System*, 2013

UNDP, *Access to Justice - Practice Note*, 2004

UNDP, *Access to justice assessments in the Asia Pacific: A review of experiences and tools from the region*, Asia-Pacific Regional Centre, Bangkok, 2012

UNDP, *Breaking the Cycle of Domestic Violence in Timor-Leste - Access to Justice Options, Barriers and Decision Making Processes in the Context of Legal Pluralism*, UNDP Timor-Leste, 2013

UNDP, *Programming for Justice: Access for All - A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, 2005

UNDP and the Ministry of Justice Republic of Guinea-Bissau, *Access to Justice Assessment in Guinea-Bissau: Regions of Cacheu and Oio and Bissau Autonomous Sector*, 2001

UNDP and the Ministry of Justice in Timor-Leste, *Access to Justice, Customary Law and Local Justice*, 2009

UNICEF, *Annual Report 2012 for Timor-Leste*, UNICEF East Asia and Pacific Regional Office, 2013

UNICEF, *Child Maltreatment: Prevalence, Incidence and Consequences in East Asia and the Pacific - A Systematic Review of Research*, UNICEF East Asia and Pacific Regional Office, 2012

UNICEF & The Ministry of Social Solidarity, *Mapping and assessment of the child protection system in Timor-Leste*, 2011

UNICEF, *Traditional Justice Systems in the Pacific, Indonesia and Timor-Leste*, UNICEF Papua New Guinea, 2009

UNICEF, *Speak Nicely to Me: A Study on Practices and Attitudes about Discipline of Children in Timor-Leste*, 2006

UNICEF, *Timor-Leste Juvenile Justice Assessment & Strategy Paper*, 2012

UNICEF Office of Research, *Juvenile Justice*, Innocenti Digest, Vol. 3, 1998

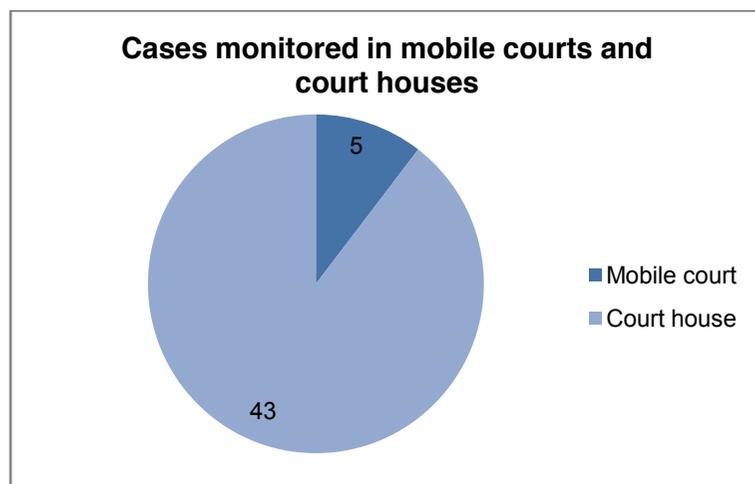
## Annex I - JSMP Court Monitoring Statistics of Cases Involving Children

### A - Monitored cases per District Court

	Dili District Court	Baucau District Court	Suai District Court	Oecusse District Court	TOTAL
<b>Criminal cases</b>	30	1	10	0	41
<b>Civil cases</b>	7			0	7
<b>TOTAL</b>	37	1	10	0	48

**TOTAL # OF CASES MONITORED 48**

### B - Monitored cases tried in mobile courts



### C - Monitored criminal cases per district where the crime occurred

District	# of cases
Aileu	3
Ainaro	2
Baucau	1
Bobonaro	4
Covalima	3
Dili	12
Ermera	8
Liquiçá	7
Manufahi	1
<b>TOTAL</b>	<b>41</b>

**D - Monitored criminal cases per type of crime (as per Penal Code provision)**

<b>Crimes perpetrated against children</b>	<b># of cases</b>
<b>Sexual abuse of a minor - art. 177</b>	<b>27</b>
<b>Rape - art. 172</b>	<b>5</b>
<b>Physical assault - art. 145</b>	<b>2</b>
<b>Mistreatment of a minor - art. 155</b>	<b>2</b>
<b>Infanticide - art. 142</b>	<b>2</b>
<b>Aggravated homicide - art. 139</b>	<b>1</b>
<b>Simple homicide - art. 138</b>	<b>1</b>
<b>TOTAL</b>	<b>40</b>

**E - Monitored criminal cases per children's type of involvement**

<b>Child's involvement</b>	<b># of cases</b>
<b>Child victims</b>	<b>40</b>
<b>Child witnesses</b>	<b>1</b>
<b>Children in conflict with the law</b>	<b>0</b>
<b>TOTAL</b>	<b>41</b>

## F - Monitoring form for criminal cases involving children

JSMP Formuláriu Monitorizasaun - Kazu krime envolve labarik      Staff:	JSMP Formuláriu Monitorizasaun - Kazu krime envolve labarik      Staff:
<p><b>Númeru Kazu *</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p><b>Data monitorizasaun primeiru*</b></p> <div style="display: flex; justify-content: space-between; width: 100%;"> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> </div> <p style="font-size: small; margin-left: 10px;">Loron      Fulan      Tinan</p> <p><b>Data monitorizasaun seluk</b></p> <div style="display: flex; justify-content: space-between; width: 100%;"> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> </div> <p style="font-size: small; margin-left: 10px;">Loron      Fulan      Tinan</p> <p><b>Tipu kazu *</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Artigu 138 - Omisidiu simples</li> <li><input type="radio"/> Artigu 139 - Omisidiu agravadu</li> <li><input type="radio"/> Artigu 140 - Omisidiu negligjente</li> <li><input type="radio"/> Artigu 145 - Ofensa ba integridade fizika simples</li> <li><input type="radio"/> Artigu 146 - Ofensa ba integridade fizika grave</li> <li><input type="radio"/> Artigu 148 - Ofensa ba integridade fizika negligjente</li> <li><input type="radio"/> Artigu 154 - Maus-tratus ba kónjuje</li> <li><input type="radio"/> Artigu 155 - Maus tratus ba menór</li> <li><input type="radio"/> Artigu 161 - Raptu</li> <li><input type="radio"/> Artigu 172 - Violasau seksual</li> <li><input type="radio"/> Artigu 175 - Prostituisaun infantil</li> </ul> <p><b>Iha ona envolvimento ho sistema justisa iha uluk? Karik los, envolvimento hanesan:</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Violensia domestika</li> <li><input type="radio"/> Abuzu seksual</li> <li><input type="radio"/> Kazu krime seluk: _____</li> <li><input type="radio"/> Kazu sivil: _____</li> </ul> <p><b>Tuir ita nia hatene, mekanismu justisa tradisional iha envolvimento iha kazu ne'e ka lae? Karik los, bele deskreve oinsa:</b></p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	<p><b>Tribunal *</b></p> <div style="border: 1px solid black; height: 20px; width: 100%;"></div> <p><b>Ne'e tribunal movel ka?</b></p> <p><input type="radio"/> Sin</p> <p><input type="radio"/> La'e</p> <ul style="list-style-type: none"> <li><input type="radio"/> Artigu 177 - Abuzu seksual ba menór</li> <li><input type="radio"/> Artigu 178 - Aktu seksual ho adolexente</li> <li><input type="radio"/> Artigu 225 - La halotuir obrigasaun alimentár</li> <li><input type="radio"/> Artigu 226 - Subtrasaun ba menór</li> <li><input type="radio"/> Artigu 251 - Furtu simples</li> <li><input type="radio"/> Artigu 252 - Furtu agravadu</li> <li><input type="radio"/> Artigu 253 - Roubu</li> <li><input type="radio"/> Artigu 258 - Danu simples</li> <li><input type="radio"/> Artigu 259 - Danu agravadu</li> <li><input type="radio"/> Artigu 260 - Danu ho violénsia</li> </ul> <p><b>Tipu seluk</b></p> <p>Artigu -</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p><b>Labarik envolve hanesan:</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> Arguidu</li> <li><input type="radio"/> Lezadu</li> <li><input type="radio"/> Testemuña</li> </ul>
<p><b>Arguidu nia naran</b></p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p><b>Arguidu nia idade</b></p> <div style="border: 1px solid black; width: 100%; height: 20px;"></div> <p><b>Arguidu nia sexu</b></p> <div style="display: flex; justify-content: space-around; width: 100%;"> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> </div> <p style="font-size: small; margin-left: 10px;">Feto      Mane</p> <p><b>Relasaun entre vitima no arguidu saida?</b></p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p><b>Juis nia naran</b></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p><b>Prokurador nia naran</b></p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div> <p><b>Data akontesimentu</b></p> <div style="display: flex; justify-content: space-between; width: 100%;"> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> /            <div style="border: 1px solid black; width: 30%; height: 20px;"></div> </div> <p style="font-size: small; margin-left: 10px;">Loron      Fulan      Tinan</p> <p><b>Faktu sira</b></p> <div style="border: 1px solid black; height: 150px; width: 100%;"></div>	<p><b>Lezadu nia naran</b></p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p><b>Lezadu nia idade</b></p> <div style="border: 1px solid black; width: 100%; height: 20px;"></div> <p><b>Lezadu nia sexu</b></p> <div style="display: flex; justify-content: space-around; width: 100%;"> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> <div style="border: 1px solid black; width: 30%; height: 20px;"></div> </div> <p style="font-size: small; margin-left: 10px;">Feto      Mane</p> <p><b>Defensór nia naran</b></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p><b>Ofisiál justisa nia naran</b></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p><b>Tradutór nia naran</b></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <p><b>Fatin akontesimentu (Distritu)</b></p> <div style="border: 1px solid black; height: 30px; width: 100%;"></div>

**Labarik presente iha audiensia ka?**

- Sin
- Lae

**Karik lae, ne'e tanbasa?**

**Karik iha medida protesaun ba labarik hanesan:**

- Labarik no arguidu hein iha fatin ketak
- Labarik fo ninia depoimentu iha fatin ketak
- Inan-aman ka ema apoiu seluk hamaluk ba tribunal ho labarik
- Juis uza liafuan ne'ebe simples no adekuadu ba labaraik
- Nunka konfronta labarik vitima ho arguidu
- Labarik hetan protesaun husi polisia (karik iha perigu ba labarik ka familia nia seguransa)
- Audiensia taka ba publiku no media
- Medida protesaun seluk

**Tuir ita nia hatene, Tribunal simu relatoriu husi MSS kona-ba labarik nia situasaun ka lae?**

- Sin
- Lae
- La iha informasaun kona-ba ne'e

**Agora labarik hela iha ne'ebe?**

- Iha ninia familia nia uma
- Iha parente seluk nia uma
- Iha uma mahon
- Iha prizaun (prizaun preventiva)
- Iha fatin seluk: \_\_\_\_\_

**Deskreve medida protesaun ba labarik (karik iha)**

**MSS envolve iha kazu ne'e hanesan fo apoio ba labarik ka ninia familia?**

- Sin
- Lae
- La iha informasaun kona-ba envolvimentu ne'e

**Testemuña sira nia naran, idade no depoimentu**

*(karik labarik ne'ebe envolve iha kazu ne'e fo depoimentu, keta haluha tau informasaun ne'e mos)*

**Estatutu kazu \***

- Progresu ka pendente
- Hetan desizaun
- Taka

**Desizaun saida**

- Absolve
- Kondena
- Homologu
- La hatene

**Data desizaun**

/  /   
Loron Fulan Tinan

**Sentensa saida**

- Pena prizaun
- Pena multa
- Traballu ba komunidade
- Pena admoestasau
- Suspensaun ba pena prizaun
- Suspensaun ba pena prizaun ho devér
- Suspensaun ba pena prizaun ho regra ba konduta
- Suspensaun ba pena prizaun ho monitorizasaun

**Deskreve desizaun**

*(Keta haluha tau informasaun kona-ba fundamentasaun, artigus ne'ebe tribunal aplika, agravasaun ka atenuasaun karik iha, no razaun tanbasa aplika agravasaun ka atenuasaun)*

Observasaun sira

Labarik nia sentimentu kona-ba prosesu julgamentu

Database Officer

Data tau iha database   201

Haree entry seluk ba kazu ida ne'e

## G - Monitoring form for civil cases involving children

JSMP Formuláriu Monitorizasaun - Kazu sivil envolve labarik Staff:		JSMP Formuláriu Monitorizasaun - Kazu sivil envolve labarik Staff:	
<b>Númeru Kazu *</b>	<b>Tribunál *</b>	<b>Relasaun entre vitima no arguidu saida?</b>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Data monitorizasaun primeiru*</b>	<b>Ne'e tribunál movel ka?</b>	<b>Juis nia naran</b>	<b>Advogadu privadu ka defensor nia naran</b>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="radio"/> Sin	<input type="text"/>	<input type="text"/>
Loron Fulan Tinan	<input type="radio"/> La'e	<b>Prokurador nia naran</b>	<b>Ofisial justisa nia naran</b>
<b>Data monitorizasaun seluk</b>	<b>Tipu kazu *</b>	<input type="text"/>	<input type="text"/>
<input type="text"/> / <input type="text"/> / <input type="text"/>	<input type="radio"/> Divórsiu	<b>Tradutor nia naran</b>	<input type="text"/>
Loron Fulan Tinan	<input type="radio"/> Atu presta alimentus		
<b>Pedidu (iha petisaun inisial)*</b>	<input type="radio"/> Guarda labarik		
<input type="text"/>	<input type="radio"/> Tipu kazu seluk: _____	<b>Labarik presente iha audiencia ka?</b>	<b>Agora labarik hela iha ne'ebe?</b>
		<input type="radio"/> Sin	<input type="radio"/> Iha ninia familia nia uma
		<input type="radio"/> Lae	<input type="radio"/> Iha parente seluk nia uma
		<b>Karik lae, ne'e tanbasa?</b>	<input type="radio"/> Iha uma mahon
		<input type="text"/>	<input type="radio"/> Iha fatin seluk: _____
<b>Faktu sira</b>		<b>Karik iha medida protesaun ba labarik hanesan:</b>	<b>Tuir ita nia hatene, Tribunal simu relatoriu husi MSS kona-ba labarik nia situasaun ka lae?</b>
<input type="text"/>		<input type="radio"/> Juis rona labarik iha fatin ketak	<input type="radio"/> Sin
		<input type="radio"/> Juis uza liafuan ne'ebe simples no adekuaudu ba labaraik	<input type="radio"/> Lae
		<input type="radio"/> Audiencia taka ba publiku no media	<input type="radio"/> La iha informasaun kona-ba ne'e
		<input type="radio"/> Tribunal konsidera duni labarik nia hanoin no sentimentu	
		<input type="radio"/> Medida protesaun seluk	
<b>Iha ona desizaun ne'ebé relevante husi uluk? Karik loos, desizaun kona-ba kazu hanesan:</b>	<b>Artigus ne'ebé tribunal aplika:</b>	<input type="text"/>	
<input type="radio"/> Divórsiu	<input type="text"/>	<b>Deskreve medida protesaun ba labarik (karik iha)</b>	
<input type="radio"/> Atu presta alimentus		<input type="text"/>	
<input type="radio"/> Guarda labarik			
<input type="radio"/> Kazu sivil seluk: _____			
<input type="radio"/> Kazu krime: _____			
<b>Autór nia naran</b>	<b>Réu nia naran</b>		
<input type="text"/>	<input type="text"/>		
<b>Autór nia idade</b>	<b>Réu nia idade</b>		
<input type="text"/>	<input type="text"/>		

Tuir ita nia hatene, mekanismu justisa tradisional iha envolvimentu iha kazu ne'e ka lae? Karik los, bele deskreve oinsa:

Testemuña sira nia naran, idade no depoimentu

*(karik labarik ne'ebe envolve iha kazu ne'e fo depoimentu, keta haluha tau informasaun ne'e mos)*

**Estatutu kazu \***

- Progresu ka pendente
- Hetan desizaun (kazu julgadu)
- La hatene

**Desizaun saida**

- Prosedente (Aseita)
- Improsedente (la aseita)
- Homologo

**Data desizaun**

/  /   
 Loron      Fulan      Tinan

**Deskreve desizaun**

*(Keta haluha tau informasaun kona-ba fundamentasaun, artigus ne'ebe tribunal aplika)*

**Observasaun sira**

**Labarik nia sentimentu kona-ba prosesu julgamentu**

**Database Officer**

Data tau iha database   201

Haree entry seluk ba kazu ida ne'e

## Annex II - Interviews and Roundtable Discussions with Key Stakeholders

### A - Interviews with key stakeholders conducted between September 2013 and April 2014

	Dili	Baucau	Ermera	Manatuto	Bobonaro	Covalima	Oecusse	TOTAL
Judge	3	1				1	1	6
Public Prosecutor	2		1		1	2	1	7
Public Defender	1	1				1	1	4
VPU Officer	1	2	1	2	1	1	1	9
CPO	2	1	1	1	2		2	9
Other MSS Staff	2							2
MoJ	2							2
NCRC	1							1
PDHJ	1							1
NGOs	9						2	11
Shelters/Alternative Care Institutions	3	1					2	6
Chefe de Suco	1		1				2	4
Children in shelters	3	2						5
Children involved in court cases	6				2	1		9
<b>TOTAL</b>	<b>37</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>6</b>	<b>12</b>	<b>76</b>

**TOTAL # OF PEOPLE INTERVIEWED 76**

## B - List of interviewed NGOs

Organisation / Institution	Provided statistical data to JSMP
ALFeLa	Yes
Ba Futuru	Yes
Casa Vida	Yes
Forum Comunicação e Juventude (FCJ)	Yes
Forum Tau Matan (FTM)	Yes
PRADET	Yes
FFSO	No

## C - Roundtable discussions' list of participating organisations/institutions

### Roundtable discussion with civil society (held on 18 Feb 2014)

ALFeLa  
Asosiasaun HAK  
Associação de Advogados de Timor Leste (AATL)  
Casa Vida  
ChildFund  
Fokupers  
Forum Comunicação e Juventude D. Bosco (FCJ)  
Forum Tau Matan (FTM)  
UNICEF

### Roundtable discussion with Government and Judicial Institutions (held on 19 Feb 2014)

Legal Training Centre (CFJ)  
Public Defender's Office  
Ministry of Education  
MSS  
NCRC  
SEFOPE  
PDHJ  
Public Defenders Office

## D - Statistical data provided by Government and Judicial Institutions

Institution	Provided statistical data to JSMP
Dili District Court	Yes; but incomplete
Baucau District Court	No
Suai District Court	No
Oecusse District Court	No
Office of the Prosecutor General	No
National VPU	Yes
Baucau VPU	Yes
Ermera VPU	Yes
Maliana VPU	No
Manatuto VPU	Yes
Oecusse VPU	Yes
Office of the Public Defender	Yes
Oecusse Public Defender	Yes
Baucau Public Defender	No
Becora Prison	Yes; but incomplete
MSS	<ul style="list-style-type: none"> <li>- Data on Juvenile Justice: Yes</li> <li>- General data: No</li> </ul>
Baucau CPO	Yes
Dili CPO	No
Ermera CPO	No
MalianaCPO	No
Manatuto CPO	Yes
Oecusse CPO	Yes
PDHJ	No

\* In order to request the above listed statistical data, JSMP directly contacted all of the listed institutions and departments and submitted several official written requests over the period of several months.



*Working together to create a strong  
and fair justice system for all*

*Children's Access to Formal Justice in Timor-Leste  
- A Status Report*

2014 © Judicial System Monitoring Programme (JSMP)

[www.jsmp.tl](http://www.jsmp.tl)