



Report and Recommendations for civil law litigation reform in Timor-Leste

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Summary

JSMP has a broad role of monitoring and evaluation of the justice sector in Timor-Leste (TL). JSMP monitors cases in all courts to ensure the transparency and proper functioning of this sector, however access to cases in civil law has been limited. It is suggested this access has been limited because of elements of the following:

- 1) public defenders are pressured to take comparatively more criminal cases with relatively quicker turnaround times,
- 2) slow turnover of civil law cases into hearing dates,
- 3) complicated civil legal provisions (for example contract law) and lack of training for all judicial actors,
- 4) judiciary is no longer supported to make legal research and reach sound legal decisions
- 5) protracted hearings and inexhaustible adjournments for civil cases,
- 6) reducing resources available to the Courts for administrative tasks such as updating databases and publishing decisions,
- 7) public defenders having limited ongoing training on running civil cases effectively,
- 8) a comparatively stronger understanding of Penal Code amongst the legal profession, and
- 9) apprehension felt by the judiciary in District Court and Court of Appeal in taking on substantive civil law matters that could take significant time, legal research and human resources to reach a sound and defensible judgment.

JSMP decided to study these problems further through the development of this discussion paper. The initiative stems from feedback given to JSMP from all judicial actors and civil society on the difficulties in hearing and executing civil law matters in TL. The limited function of the TL Courts in civil law has been identified as a concern at various points in time by donors especially given the prevalence of land, property and family law matters.¹

This discussion paper divided into four (4) parts:

- ✓ Policy challenges
- ✓ Selected case examples
- ✓ Implementation Suggestions
- ✓ Recommendations

JSMP would like to thank the judiciary, private sector lawyers, public defenders and other judicial actors for their input into this report.

¹¹ See UNDP Justice System Strengthening Programme: Mid-Term Evaluation Report May 2008, p10.

Civil Law in Timor-Leste

The formal justice sector covers criminal and civil matters in Timor-Leste. Whilst progress has been made towards a functioning formal justice sector in Dili and where possible in the districts, civil cases are less prevalent and limited in reaching finality in the Court system in TL. The right to counsel and legal assistance is accepted as being constitutionally protected in all cases, including civil cases.² As a result, Public Defenders and legal assistance organizations can provide representation in civil cases where resources allow them too.

In 2016 JSMP monitored 957 cases in which only 16 cases were civil cases.³ This could be because judicial and court capacity to deal properly with Civil cases seems to be declining coupled with JSMP having less resources for monitoring less Civil cases between 2015 and 2016.

The process for Civil proceedings differs greatly from a criminal case in evidence requirements and process. Bottlenecks are occurring at various practical and process phases in TL. Generally, the process in the formal justice sector for civil law issues in TL follows:

- Approaching a private lawyer or the Office of Public Defenders (OPD) if available, to obtain representation,
- the initial petition to the Court and decision whether to seek conciliation (for civil compensation matters),
- service return or acknowledgement due,
- witness's statements and framing of the issue,
- settling hearing dates,
- a peremptory hearing; and a further hearing,
- hearing of arguments, and
- handing down of a judgment.

There is no standard or online accessible case management system available within the Courts to ensure Court procedure is adhered to. The Courts are also not adept at keeping judicial actors informed of developments. At a high level, this is because of ongoing limited available court time and an unsupported judiciary. This is especially evident when compared to the higher rate of turnover for criminal cases. Access to finalized Court decisions is not being provided consistently on the Tribunais website. This makes it difficult for JSMP to monitor and report on civil cases with accuracy in TL and undermines access to justice for the people of Timor-Leste.

In late 2017 JSMP team members interviewed a member of the judiciary of the Court of Appeal who concluded that their role in the civil appeals jurisdiction was constrained because of the small judiciary in the Court of Appeal to deal with a large criminal and civil case load⁴ and the comparatively longer process for a civil case when compared

² Article 26 of the Constitution of Timor-Leste.

³ JSMP State of the Justice Sector 2016, p 1.

⁴ During this report written there were only three (3) members of the judiciary in the Court of Appeal, but in September 2018 two more judges appointed to work at the Court of Appeal.

with the urgency to predict and hear an appeal from a criminal case where defendants are in preventive detention.

The Court of Appeal Member also admitted that the Court of Appeal has an insufficient case management system to update all judicial actors on the status of the civil case. This prevents efficient information sharing and case management, especially on complex legal questions that may take various evidentiary hearings or expert witnesses.

Similar constraints apply to civil case management under the OPD. JSMP members have found that Public Defenders are not trained or empowered to undertake an effective role in the civil law jurisdiction, due to education, lack of resources and the lower predictability of resolution in TL. The OPD seems to be significantly under resourced to deliver its mandate for the people of TL.

Private lawyers interviewed by JSMP all inferred that the unpredictable nature of reaching finality in the civil jurisdiction made their job to serve their civil clients challenging. All private lawyers said they had several pending cases for clients with limited prospects of conclusion because of adjournments, lack of judicial capacity, problems locating respondents and lack of information or updates from the Courts to applicants. It can be common for private legal⁵ representation to explain the technical civil law position to the unaware judge and even give demonstration examples in the District and Appeal Court. JSMP's interviews showed that even where a client has money to access a private lawyer, the civil jurisdiction is still failing to achieve appropriate results.

Additional issues from an inhibited civil law jurisdiction in TL

Contract enforcement: enforceable contracts are integral to modern commerce whereas in Timor-Leste many contracts are informal and personal. The weak framework for contracts constrains market transactions across the economy and is particularly relevant for financial and land transactions.⁶

Finance: the lack of legal frameworks mean that borrowers cannot pledge collateral and banks cannot enforce loan contracts. The result of this is that the cost of finance is increased resulting in higher interest rates, shorter maturities and lower amounts available to customers. This results in real interest rates of over 14% and lending to the private sector of less than 20% of GDP, a low figure by global standards.

Land: Until property rights are clarified, land transactions will remain difficult and mostly informal.

⁵ According with JSMP interview with the private lawyer

⁶ See Business Law Framework Report of the Law Reform Commission of Timor-Leste October 2017.

Relevant civil case law examples

JSMP has reviewed available civil case law on the Tribunais de Timor Leste online database and also through requests for access directly to the Courts where no online records are available. The cases reviewed relate to Civil Code provisions regarding lease, sale and purchase and financial sector loan agreements. JSMP has summarized 2 examples below to demonstrate these challenges:

Example 1

ENSUL v SAPT 2002 – District Court

Breach of Lease: This case was filed in 2002. The matter lasted 7 years with judgment not handed down until 2009. JSMP was not able to identify the amount of hearing dates through requests to the Court.

On April 25, 2000, the company Sociedade Agricola Patria e Trabalho (SAPT) (the Applicant) entered into a building permit contract to Ensul company (the Respondent) to use four (4) buildings out of seven (7) buildings (within the same compound) for cement storage and building equipment within 6 months. The agreed payment was US \$3000,00 per month. The contract term ran from May 2000 until November 2000.

The tenant purportedly used the seven (7) buildings without the knowledge of the Applicant. The tenants also continued to use the buildings beyond the expiration of the contract term until November 2000. The tenant was also accused of making improvements to the building without the knowledge of the Applicant.

The tenant also used the warehouse to conduct other business activities not included in the scope of use under the contract which had argued impacts on the coffee business of the Applicant. The Applicant argued losses of US \$10,000.00 per month from August 2000 to November 2000.

The Respondent argued that there was clear agreement as to the provisions of the contract from both parties were very clear that all buildings were covered in the Lease. The Respondent also spent US \$ 200,000 on the cost of repairing some of the buildings. The Respondent requested the court refuse a related request in relation to the payment of the Applicant's financial loss.

JSMP was not able to get clarity on the number of hearing dates or adjournments for this matter as the Court used manual record keeping at the time of the case.

Decision:

The Court assumed that the contract made by both parties is legal, and that the Respondent's rights under the Contract were automatically extended for 6 months up until the expiration of the Contract on May 2003. Basically, that the Respondent was correct in their position.

The Court did not grant the Respondent's claim for civil compensation for \$200,000 because of insufficient evidence as to the improvements.

The Applicant was then granted an Appeal to the Court of Appeal.

ENSUL v SAPT 2008 – Court of Appeal

The Appellant (Applicant) did not accept the District Court's legal interpretation that the contract that runs between the two parties is valid. The Appellant argued the Contract was invalidated due to the Respondent's breach.

The Appellant also disagreed with the District Court that the Respondent complied with the Contract's terms.

The Respondent argued that the District Court was wrong not to give compensation and again requested civil compensation of US \$200,000 from the Applicant.

The Appellant again declared that the term of the contract expires on 30 November 2000, with a contract term of 6 months. The Respondent again argued that the lease automatically renewed based on a term in the contract.

The contract provided that the contract period starts from 1 June 2000, and will be renewed automatically at the end of the contract due date and that both parties may renew the contents of the contract.

The Appeal Court declared that the contract did give the opportunity for the Respondent to renew the contract automatically after having communicated the intention to renew in writing and the plaintiff does not dispute the renewal within 30 days after the receipt of the notice to extend by the Respondent.

The Appeal Court further upheld the decision of the District Court that the Respondent was not obligated to pay US \$10,000 for illegal occupation. The Appeal Court also upheld the decision of the District Court not to grant civil compensation for US\$200,000 for improvements made to the buildings by the Respondent due to insufficient evidence.

However, the Court went further to remedy the parties situation in the interests of fairness.

Based on all available evidence, the Court of Appeal overturned the decision of the District Court that the Respondent was correct in their interpretation of the Contract. The Court held that:

- 1. the Respondent must vacate possession under the Contract,**
- 2. there were no proven claims for Civil Compensation by the Respondent and prevented any further Appeals as to compensation.**

Conclusions on Case Example 1

On a practical level, ENSUL v SAPT shows that a resolution of a civil case can take many years. JSMP was not able to get the number of hearing or adjournments that lead to this case becoming so protracted. The original decisions taking 7 years to resolve leads to conclusions of ineffective case management.

The arguments of each of the parties demonstrates a lack of clear interpretation of the Civil Code's application to contract provisions. The law of contracts should be predictable and consistently applied by the Court without extensive references to legal theory or overseas jurisdictions to find the basic legal position. In fact, breach of contract relating to lease disputes like in this case, should be drawn from a transparent and predictable framework of rules.

The fact that the Court of Appeal judgment returned the Parties to their positions before the contract also leads to conclusions of equitableness by a Court. If it is a legally sound conclusion, it is surprising that this was not concluded originally by the District Court and demonstrates an uncertainty as to how to regulate contract rights at the time.

Since this case was handed down, the Courts seem to be under political pressure to improve civil law case certainty, however have limited capacity and lack the full resources needed to achieve it.

Example 2

Timor Telecom v Internal Timorese Company – District Court

Dispute for breach contract: The trial began 2014 March 21 and finally ended in June 2015.

The Applicant was Timor Telecom.⁷

In 2011 Timor Telecom entered into a contract with the Internal Timorese Company to provide 'pre-paid mobile business services.' The business services were related to providing the Timor Telecom network as communication network to the client (the Internal Timorese Company) and was to be paid for monthly.

The client failed to make the contract payments from 23 August 2012 until 24 October 2013. Timor Telecom continued to provide the service whilst the client did not make any payment for 14 months.

Timor Telecom made an initial petition through their legal representation to the Court to demand compensation for their loss. Timor Telecom claimed the client's actions caused loss in the amount of US\$2,364.66. Timor Telecom then lodged a petition in the District Court.

In March 2014, the Court received the initial petition from Timor Telecom. In April 2014, the Justice Official gave the notification to the Respondent, but the Respondent declined to give any response for the initial petition. At this point, the Justice Official advised the Respondent that even if the Respondent did not give its response, the court still considered that the Respondent had already received service and that it then had 30 days to respond or the Applicant's facts would be considered true and correct.

On 19 August 2014, the court informed the legal representative for the Applicant that the Respondent had refused service and the legal representative for the Applicant confirmed with the Court that the litigation was to continue.

Decision:

On 16 December 2014, the Judge concluded that this demand would be resumed at the final hearings stage and that there would be no need for trial to discuss the evidence in the case because the Respondent acknowledged all the evidence was true since it gave no response in time.

⁷ Timor Telecom, S.A. is a telecommunications operator incorporated in Timor-Leste in 2002 as a jointly owned company between Portuguese and Timorese investors.

This notification process was protracted because the Respondent regularly moved premises and the Court was under resourced to effect service. The court took 4 months to notify the Respondent. Only in February 2015 did the court get answers from both parties.

At the hearing, the Applicant maintained its position as argued in the petition, whilst lawyers for the Respondent argued that the US\$2,364.66 in overdue charges were incorrect, and that the internet service had never been used.

The judge upheld the Applicant's claim amount in June 2015. JSMP understands that the judge responsible for this case was delayed because of external meetings and not other Court hearings.

Conclusions on Case Example 2

The Timor Telecom case demonstrates that the law on service and acceptance for civil cases in Timor-Leste is both misunderstood and inappropriate for the scale of cases, the cultural perceptions of receiving service and the environmental landscape of the country. This case also demonstrates that challenges are the same even in cases involving small monetary amounts.

JSMP confirmed that, under the Civil Process Code, a respondent has 30 days to respond to service of claim from the Applicant.⁸ If the respondent does not lodge a response after receiving valid service, then the Court is able to presume the facts of the applicant as true and correct. The applicant then has 10 days to give their response to the respondent's position to the Court.⁹ Therefore, the application of the procedures for deemed service and assumed facts are likely unfair for a country with isolated communities, limited access to legal advice and a low understanding of the formal justice sector.

This case also demonstrates the challenges in designing the framework for effecting service in a country with difficult physical access in many districts, and lack of physical addresses in most places.

Record keeping at the Posto Administrativo level also cannot be relied on by judicial actors to track down respondents. In practice, the onus is on applicants and private lawyers to locate respondents themselves and even then, they will not have assurance the Court could effect service.

⁸ Article 366 Civil Procedure Code

⁹ Article 380 Civil Procedure Code.

Policy Problems facing Civil Law Jurisdiction

Private lawyers are costly and not able to provide certainty in litigation for their clients

Private lawyers are available to litigate in Timor-Leste and from JSMP's interviews are generally taking on contract and business law civil cases for larger international clients. Self-representation is also possible in TL but is rarely successful from JSMP's interviews and given the developmental nature of the formal justice sector in Timor-Leste, it is likely litigants will require legal representation to engage with the unfamiliar complexities of the civil law jurisdiction.

The *Codigo Processo Civil* (CPP)¹⁰ sets out various rules regarding the ability for private lawyers and public defenders to take on civil law matters. These rules are not yet strictly adhered to in TL but broadly provide that a private lawyer is able to take charge of any case where they have the capacity to progress the case to the highest Court.

Private lawyers tend to represent only a small portion of the foreign and TL community. There also seems to be a minimal provision of pro bono legal services focused on criminal law. There are reportedly around five international law firms operating in Timor-Leste that could represent a client through civil litigation. JSMP understands that these firms are expensive because of the costs of staffing (all of them have expatriate lawyers based in Dili), and uncertainty in the amount of work and time involved in a civil litigation. Generally, they are only involved in cases involving large international business transactions relating to private investment, taxation or employment in TL.

Even where private lawyers have made a successful petition to the Court, there is limited publicly available information for them to access. JSMP understands that private lawyers find it difficult to receive information from the Courts when hearing dates change or when the circumstances of the case change. It is the obligation of the Court to notify parties when the circumstances of their case change.¹¹ This means that private lawyers are regularly spending time visiting the Courts and requesting basic case information from the Courts.

Public Defenders and Public Prosecutors are under resourced to take on a productive civil case load to alleviate the backlog

The Public Defender is able to take civil cases and has narrow circumstances listed in its mandate.¹² Public Defenders are also empowered to represent vulnerable and incapacitated persons in civil matters.¹³ Public Prosecutors can also legally take civil case instructions on behalf of minors.¹⁴ Public Prosecutors also have a duty to inform their clients on criminal matters that a civil compensation right might also exist and can be pursued at the same time or separately to the criminal matter.¹⁵ The Court can also

¹⁰ Codigo Processo Civil is the Civil Procedure Code of Timor-Leste.

¹¹ Article 211 Codigo Processo Civil provides that the Court must notify all parties about any issue involving the process.

¹² Article 36 of the Codigo de Processo Civil.

¹³ Article 22 of the Codigo de Processo Civil.

¹⁴ Articles 5 Law 14/2005 Estatuto do Ministerio Publico.

¹⁵ Article 72 Codigo de Processo Civil

intervene in a criminal case to direct the civil compensation matter be heard separately.¹⁶ The CPP also provides that a public lawyer can take a civil law matter where the client does not have the financial means for a private lawyer. Finally, the internal law for the public defenders requires an inspector to monitor the performance of the defenders and to ensure that public defenders are representing clients equally, including not just focusing on representing criminal clients.¹⁷ In 2018, the OPD recruited one inspector, who began to focus on monitoring the workload of public defenders. This monitoring exercise also includes assessing if the burden for handling criminal and civil cases is well adjusted. According to the general coordinator of the OPD, this year of 2018, of all cases handled, each public defender was required to have at least 2 civil cases.

According to JSMP, this figure is still very small and cannot be used as an accurate solution to deal with the number of civil cases which are still pending in the OPD.

None of these provisions establishing effective civil law representation by public lawyers are translating into effective civil law legal aid in practice. This framework is not resulting in effective public legal representation in civil law disputes for applicants or respondents. JSMP has interviewed public defenders who have confirmed that the system incentivizes defenders to receive criminal case instructions rather than civil matters. This is objectively because:

- criminal cases need to be resolved quickly where matters involve possible detention,
- criminal matters can involve relatively simple questions of fact and law under the Penal Code,
- public prosecutors and defenders are encouraged to resolve a set target number of cases, and
- only certain public defenders are equipped to handle civil law cases.

The Public Defenders' Office provided statistics that 648 civil instructions were received or carried over into 2017, and out of those only 456 cases were concluded. The majority of these cases (409) was concluded through mediation and conciliation, not a finalized Court judgment.

The Public Defenders' data also includes pending cases from the previous year, so it is not possible to make judgment on the number of cases received and completed involving public defenders only in 2017. The data also does not specify the District or the nature of these cases. However, it was verbally confirmed the majority was on family, divorce or land law matters.

Even on these numbers alone it can be concluded that public defenders continue to be under resourced in their role in the formal justice sector including civil law.¹⁸ At the moment, there is no independent oversight from a public defender inspector or an annual independent review.

¹⁶ Article 72 Código de Processo Civil

¹⁷ Article 15 Law 38/2008 Estatuto do Defensoria Público.

¹⁸ Ba Distrito, Access to Justice Brief: Legal Assistance in Timor-Leste: Summary of Assessment Findings and Recommendations, September 2014, especially pp12

Legal education system is not providing a consistent civil law preparation for lawyers

There are currently 4 universities providing a law qualification in TL. UNTL is the only institution with integrated Portuguese language training, which endeavors to prepare graduates to interpret the laws of TL, including the Civil Code and Civil Procedure Code. Some universities teach their students on the basis of unofficial translations into Tetum or Bahasa Indonesia of TL laws. Those translations have not been subject to any quality control or validation by official authorities. This teaching method is undermining the capacity of graduates to interpret TL laws in their original language (Portuguese), ultimately jeopardizing their technical quality as legal professionals. Further, the post graduate qualification through the Training Centre for Law and Justice (CFJJ) is reportedly not yet effective in civil law or commercial law training and assessment. JSMP understands that there is some training and examination on civil law issues; however, due to ineffective management of language gaps, lack of expert trainers, and the specialized nature of the civil law theory, the training is not highly effective. JSMP is aware of ongoing challenges in achieving a high pass rate for graduates at the Centre. This is conveyed as the result of graduates receiving inconsistent language and legal training across the law schools in TL. JSMP members understand that in 2017, out of 51 graduates from all relevant universities, only 16 passed the examinations.

Delays in setting hearing dates in the District Court and Court of Appeal

It should also be highlighted that the issue of human resources is a problem for the effective case management across the entire formal justice sector, not just the civil law jurisdiction.

JSMP has made some assumptions on the data provided. In the Dili District Court, at the current level of judges (16 judges), each judge would be on average expected to handle 151 criminal law matters and 41 civil matters every year to keep up with the demand on the District Court system.¹⁹

Total data received by JSMP in 2017 confirmed that in the Dili District Court the following cases were turned over:

Criminal Section	Civil Section
2,323 cases were pending as at January 2017	604 cases were pending as at January 2017
1,379 hearings were held	149 hearings were held

This data would mean that at the current rate of judiciary (16 judges), each judge would be responsible annually for approximately:

- 9 civil case hearings

¹⁹ JSMP has made approximations to demonstrate case loads based on all the available data.

- 86 criminal trials.²⁰

On the data received, the Dili District Court is only managing on average 12 civil cases hearings per month, with at least 500 (+) cases still pending on average at the end of each month. JSMP suspects this large number of cases is stalled because of inadequate judge training, high motivation to finish criminal cases quickly, difficulties in notification of applicants and respondents, and delays in finding the evidence of proof in civil law cases (especially land law cases, where registries, deeds and other documentation is scarce and dispersed).

This lack of effective case management results in delays in settling hearing dates, unnecessary adjournments or cases remaining as pending. This has implications on the civil jurisdiction because many matters require specialist expertise to formulate submissions and extended time and expertise for judges to read references and to conduct research in complex cases.

In accordance with JSMP monitoring results, the Court took extended periods of delays setting the follow up hearing or session. Usually, it will take 5 to 6 months for the next hearing date in the average civil law matter according to the Public Prosecutor interviewed.

Finally, similar challenges were faced in the Court of Appeal albeit on a smaller scale. JSMP understands that the judiciary is equivalently under resourced to hear civil cases following the departure of international advisers.

There are likely other bottle necks in the civil law jurisdiction of TL

As the formal justice sector matures in TL, more resourcing, electronic case management and legal education training is required. JSMP members received specific advice from members of the Judiciary that international advisers would be highly beneficial for the hearing of civil law cases. This could have immediate benefits in the quality of decisions and the time cases take to reach resolution.

Another concern for JSMP is the compliance with the civil procedure requirements for the settlement of civil remedies within a criminal case. Quantifying the legal and punitive benefits, for semi-public crimes, to balance the benefit of a criminal trial over conciliated civil compensation or a full civil claim is a difficult question that often requires legal advice. JSMP has done research on dispute resolution in TL, including on this issue, and found conciliation was beginning to have an improved impact to alleviate Court claims where a full litigated outcome is not on balance necessary.²¹

The Criminal Procedure Code actually allows for the Court examining a criminal case to also determine civil compensation for the victim. The Criminal Procedure Code presumes that these two processes will be held concurrently and therefore in practice when victims receive compensation through the courts it is normally determined as

²⁰ Presuming that, in general, judges take an equal number of cases

²¹ JSMP Report Tribunal no Rezolusaun Disputa June 2017.

part of a criminal case. More training to public defenders could increase the efficacy and standard of this conciliation process.

Under the Civil Procedure Code, a litigant can be self-represented in matters where a claim is less than \$1000.²² JSMP understands that even where litigants are self represented for small claims, these cases are given low priority from the Court system, and they are also subject to low case turnover and long litigation times. Other jurisdictions have had successes with simplified Court processes for cases with small claim amounts.²³ As questions of law, evidence and extended proceedings are less important for small claims, a Court type body could be quickly established in TL to mediate on these disputes.

More broadly, laws providing civil enforcement or civil remedies remain unimplemented in TL and it is therefore difficult for appropriate enforcement of rights by any judicial actors. For example, the Consumer Protection Law 8/2016 was passed in 2016 and has been slow in its implementation. Article 29 of that law has been interpreted to provide:

'Article 29 Public Ministry and Public Defender's Office

The Public Prosecutor's Office and the Office of the Public Defender are also responsible for the protection of consumers, within the scope of this law and within the framework of their respective powers, intervening the Public Prosecutor's Office in administrative and civil actions tending to the guardianship of general consumer interests and the Office of the Public Defender representing the citizens with insufficient economic resources that resort to it to exercise their rights under this law.'

This type of provision cannot be effectively complied with under current resourcing or capacities in the formal justice system of TL. This example also shows legislators are not incorporating well-thought implementation and budget plans in their policy and law-making processes.

²² Article 915 of the Código de Processo Civil.

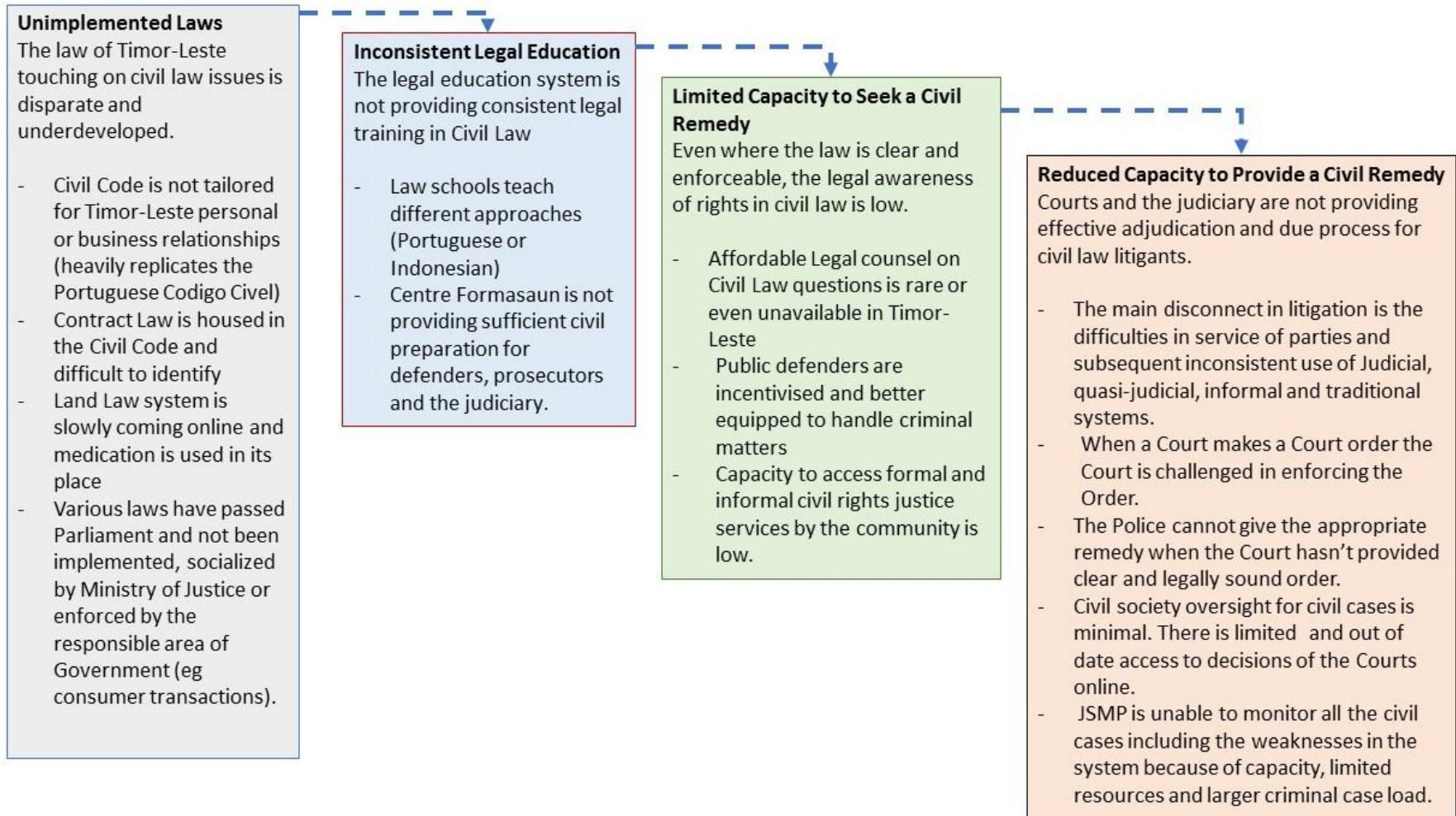
²³ Jurisdictions in Australia, Fiji, Hong Kong - China, Portugal, amongst others, have implemented a version of small claims civil resolution or smaller land based equity claim tribunals.



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Snapshot of Identified 2018 Challenges in Civil Law Jurisdiction

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JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Implementation of Reform of Civil Law Jurisdiction

The development of the formal justice sector in TL has made significant gains with alternative dispute resolution beginning to be used for some civil compensation matters. JSMP has found that there are a range of primary reforms to increase civil law case turnover for individual litigants and longer-term reforms to increase the attractiveness of TL's civil dispute mechanisms for the private sector.

Immediate objectives

The immediate requirement is to strengthen the civil law institutions and the access to information from the Courts. This will immediately improve the outcomes and transparency for compensation, contract disputes and land law matters. Judicial monitoring of civil law cases should be increased, potentially through the role of the judicial inspector. A key priority is to ensure increased resources are available to the OPD to enable increased civil case representation. Legal education also needs to be reformed to ensure substantial civil law and civil process training is given to judicial actors equally. This will ensure OPD and the Public Prosecutors are equally equipped to appear in civil disputes and judicial decisions are strengthened.

A new program of assistance to the judiciary is required, especially as pertains to civil law expertise. This will require donor coordination and a clear response on behalf of Government.

JSMP has also discussed the viability of making finance available for vetted and skilled private lawyers to take on legal aid civil law cases. This would require increased budget measures and approval in line with Government time lines. This has been considered in the past by GoTL in the Access to Justice project.

Medium-term objectives

Case allocation and case management is failing in the civil jurisdiction. Active case management from the Courts could be applied with oversight from Ministry of Justice (with increased resourcing) to mandate better resourced and supported judges to increase turnover

of claims to hearings and decisions. Further, the practice for allocation cases should be adapted to ensure there is a dedicated judiciary available for urgent claims or any civil dispute where the claim is over 24 months old without a hearing date.

The lack of passage or implementation of key commercial legal frameworks in TL also needs attention. Key legal statutes, such as a secured transactions law, could enhance the Courts certainty in application of civil law framework. The implementation of the key Land Law will also need to be monitored to ensure it is being applied correctly and effectively through the judicial system. The implementation of a secured transactions law and functioning land law system could lead to an uptake in mortgage and property law cases.

Long-term objectives:

Over the longer-term, this civil allocation list should expand into a dedicated commercial list at District Court and Court of Appeal levels, for commercial litigation and large commercial disputes.

According to reports given to JSMP, the broader judiciary administration appears to be confident that the District Court and Court of Appeal are capable of handling the increased workload if they were given increased Judiciary and Public Defender resources and capacity building to cope with increased civil law hearings. If this overall package of improvement is implemented, the District Court will begin to improve case management, which would leave the Court of Appeal to build up substantial experience in handling more substantive civil claims.

As part of the overall proposals to enhance the District Court and Court of Appeal resources, a small claims or civil resolution Tribunal or Court could be built to alleviate the Civil Law burden on the District Court level. As a result, it is envisaged that additional resources would become available for use by the District Court.

Finally, an arbitration framework could be pursued in future for Timor-Leste. The Government should review and propose the arbitration law to relieve the Courts and provide a viable litigation alternative for Timor-Leste.

Recommendations for Reform of Civil Law Jurisdiction

According to interviews of JSMP, the judiciary and Court stakeholders confirm that there is no capacity to immediately increase civil case turnover on current resourcing and technical expertise. Therefore, JSMP recommends:

1. A program of capacity building for the judiciary to focus on the Civil Procedure Code and the Civil Code's provisions for commonly encountered issues, such as breach of contract and land disputes.
2. The number of judges should be increased to reduce the current civil law back-log. If no suitable actors are available to be elevated to the judiciary, a targeted program should be developed to expedite training and qualification of new judges.
3. Government and donors consider revisiting the program design of civil law assistance delivered to the judiciary. The Law Reform Commission recommended²⁴ that a centralized unit be established in the Courts for judges to access advice during proceedings, without becoming reliant on a specific adviser. JSMP notes that international judges were previously used to hear cases and to support the judiciary to focus on complex cases to improve confidence. JSMP understands from some members of the judiciary that this could be an effective way of rebuilding civil law capacity with a clear plan to leave the judicial discretion with relevant Timorese judiciary.
4. Resources for Ministry of Justice and the Courts to update:
 - The Parties about important events in their cases (like hearing dates), and
 - Regularly and competently the Tribunais database on decisions to increase civil society oversight. Additional funding could be included to provide the technology for an electronic publicly available case management database that will ensure access to case information for the public including longer running civil cases.
5. Judicial monitoring of civil cases should be improved, potentially through increased resourcing for the 'judicial inspector' and to the 'public defender inspector', development of annual inspection plans and standard inspection templates, and more rigorous performance assessment for career progression.

²⁴ The Report on "OS TRIBUNAIS EM TIMOR-LESTE : Desafios a um sistema judicial em construção"

Public Defenders have confirmed they are ill-equipped to increase their civil law case load. Therefore, JSMP suggests:

6. Education at the Legal and Judicial Training Centre requires additional technical assistance for all legal professionals on the process for civil law in Timor-Leste.
7. Ministry of Justice should immediately provide increased funding to help improve human resources in public lawyers in order to provide more efficient services in each case and to provide more specific training in civil cases.
8. Ministry of Justice could provide a viability study on the provision of resourcing for private lawyers to take on civil law legal aid cases.

The broader civil jurisdiction could also undertake these areas of reform:

9. Consider undertaking a review of the civil procedure code to match the circumstances of disputes found in Timor-Leste and the capacity of all judicial actors. The review should ensure the law avoids including stringent requirements for civil disputes, including rules involving service and deemed acceptance of facts.
10. Consider building a small claims resolution tribunal or Court for Timor-Leste. For instance, all claims under \$5,000 could be dealt with by the small claims tribunal or Court to simplify the process and alleviate the pressure on the District Court to hear more civil cases.
11. Strengthening alternative dispute resolution (ADR) practices could reduce the civil case load of the Court. A comprehensive policy approach and legal framework should be developed to encourage and facilitate the use of ADR in the legal system and should be specifically built into the claims process in the original District Court civil law jurisdiction.
12. Revising laws or including graduated statutory civil penalties in new laws that guide the judiciary in their civil law judgments.
13. Government could agree on a policy that all current laws of Timor-Leste and all new civil laws passed are reviewed to be consistent with the Civil Procedure Code and are simplified and relevant to the Timor-Leste environment.

Attachment A – Data Provided by District Court on Criminal versus Civil jurisdictions

REPÚBLICA DEMOCRÁTICA DE TIMOR LESTE
 TRIBUNAL DISTRITAL DE DILI
 Secção Crime I,II
 Rua Abilio Monteiro, Dili – Timor Leste
 Telef.333 11 50 /333 11 51

Estatística Processo Entrada Pro Mês Ano 2017

SECÇÃO CRIMINAL	JANEIRO	FEVEREIRO	MARÇO	ABRIL	MAIO	JUNHO	JULHO	AGOSTO	SETEMBRO	OUTUBRO	NOVEMBRO	DEZEMBRO	TOTAL
PENDENTES	2323	2320	2298	2363	2339	2382	2333	2452	2412	2387	2386	2383	2323
ENTRADAS	145	126	199	110	170	111	236	15	45	119	92	105	1473
JULGADOS	148	148	134	134	127	160	117	55	70	120	95	71	1379
DEVOLVE AO M.P.													0
AGUARDA P/JULAGMENTO	2320	2298	2363	2339	2382	2333	2452	2412	2387	2386	2383	2417	2417



**TRIBUNAL DISTRICTAL DE DILI
SECÇÃO CÍVEL**

Statística Secção Cível Por Mês 2017

Descrição	Janeiro	Fevereiro	Março	Abril	Maio	Junho	Julho	Agosto	Setembro	Outubro	Novembro	Dezembro	Total
Pendentes anterior (2016)	604	598	603	601	608	622	619	622	624	628	640	644	
Entradas	16	23	20	19	25	11	16	6	11	24	10	22	203
Julgados	22	18	22	12	11	14	13	4	7	12	6	8	149
Pendentes	598	603	601	608	622	619	622	624	628	640	644	658	

Attachment B – Table of interviews

1 Judge of Appeal court
2 Judges of Dili District Court
2 Public Prosecutors
1 Public Defender
5 Private Lawyers
1 CFJ