



JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

**Report on the circumstances faced by the district courts  
Submitted to the Honourable President of the Court Of Appeal**

**Introduction**

We present this document to inform you about some critical issues facing the district courts that have been identified by JSMP through court monitoring/observation and interviews between JSMP and judge administrators. This report uses the Suai District Court as a reference point and will also comment on problems facing the other district courts. We are willing clarify and discuss this information if Your Honour is available, and if you feel it is necessary for us to provide more detailed information about these circumstances.

We believe that the Court of Appeal, as the highest court in Timor-Leste, certainly has its own priorities, but we believe that it is important to address the problems that we have observed to date. These circumstances often affect the quality of the daily and regular functioning of the courts. We believe that Your Honour has knowledge about these issues, but we are also aware that sometimes you are busy with other priorities so you are unable to adequately address these circumstances and problems. Therefore this document is informative in nature and is intended to remind Your Honour to seek a solution to these problems immediately without undue delay.

In the 2018 JSMP Overview of the Justice Sector Report<sup>1</sup>, and reports from previous years, we have outlined some of the circumstances in each of the courts and made recommendations that solutions be sought for these problems. However, during the last few months we have continued to note other problems in the courts. The Suai District Court has faced significant challenges relating to problems with fuel, water, and hygiene, and limited or non-existent equipment, which has affected the productivity and the quality of work of the court and the services it provides.

Some of the problems identified by JSMP emerged in 2015 and some are the direct result of the political impasse that affected the entire State, particularly in 2017 and 2018.

The next section outlines the problems/issues that have been identified in each of the courts.

**1. The Suai District Court**

Based on the results of JSMP monitoring since 2017, most of the courts have suffered the consequences of limited funds to respond to their daily and regular work, in particular the Suai District Court. These circumstances were confirmed by Alvaro Maria Freitas, the Judge Administrator of the Suai District Court.<sup>2</sup>

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<sup>1</sup> Pages 16 -19 of the 2018 Overview of the Justice Sector Report, at: <http://jsmp.tl/wp-content/uploads/OJS-2018-report-TETUM.pdf>

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

### **1.1 Limited fuel for operational vehicles**

The issue of a lack of fuel has been a serious problem since 2017 until now. The Suai District Court has carried out nearly all of its work with extremely limited fuel, so the courts cannot notify the parties on time. On some occasions the court has adjourned a trial because the parties have not been notified directly, but via other persons, such as police or community leaders or through other parties participating in trials at the court. Therefore when the parties did not attend, the court had to adjourn trials for long periods to wait for fuel to be able to notify the parties.<sup>3</sup> These limitations and shortcomings have meant that sometimes the judges, judicial officers and judicial secretaries have used their own money to put fuel in operational cars and motorcycle to distribute notifications to the parties or distribute release orders and other relevant documents.

### **1.2 Lack of operational vehicles**

Currently the Suai District Court has only one operational car to deliver letters rogatory, release orders, requests for the Court of Appeal, to transport judicial officers to the mobile court, as well as to deliver notifications relating to the four district courts, namely covering Covalima, Manufahi, Maliana and Ainaro districts/municipalities. However this car has been out of service, so when there was an urgent notification, the judicial secretary had to provide a car and transport judicial officers to provide notifications.

### **1.3 Hygiene and water for the toilets**

From 2015 until now the Suai District Court has not been able to provide a toilet for visitors due to a lack of clean water. This has meant that the court has not been able to provide a toilet for visitors, judicial actors and judicial officers, as well as parties to proceedings in this court. For many years the court has had to ask the fire brigade to provide water at certain times and/or just rely on rain water. However, in the dry season the judicial actors have had to go to their home and judicial officers have had to ask members of the community if they can use their bathrooms outside of the court.

As discussed in the JSMP Press Release published on 27 May 2019, JSMP discovered that this situation has also undermined minor victims who have suffered sexual violence or sexual abuse who need to go to the bathroom. JSMP believes that in such circumstances victims need to hold on until they get home. This is because psychologically they do not feel safe or comfortable enough to ask members of the community to use their bathrooms because of the trauma or pressure they feel as victims of violence and abuse.

### **1.4 Shortcomings of the court room and equipment and a dedicated room for objects of crime**

The Suai District Court only has two court rooms available for six judges. Sometimes when there are many hearings the parties have to wait because the court rooms are in use.

The court also does not have a dedicated room for objects of crime. The Suai District Court has to keep lots of petrol on hand that has been seized from defendants who have committed the

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<sup>3</sup> Interview with Alvaro Maria Freitas, Judge Administrator of the Suai District Court, March 2019

crime of smuggling (illegally importing the fuel across the border), but due to a lack of space, these objects of crime have to be put together with archived cases with a risk of contamination, corruption and/or destruction, damage or adulteration.

In addition, there are not enough computers for judicial officers because there are six judicial officers who share a central office but there are only 3 computers available, so they have to take turns to process cases. The Suai District Court also has a problem with the large printer in the criminal section because it has been broken since 2017, so judicial officers have to wait in line to print their documents from the large printer in the central office.

The Suai District Court also has a lack of facilities, such as chairs and tables because some of them are broken and the filing cabinets are all broken and many files are piled up on the tables and the cement floor. In addition, three Air Conditioners in the judicial officers work area have been out of service since 2017 which means that the officers have to go outside during work hours because they cannot endure the heat in the room and there is no circulation of air.

### **1.5 Insufficient number of judicial officers**

The Suai District Court also suffers from a lack of judicial officers because there are only six officers to assist six judges to prepare for trials and assist them during trials, to notify the parties, to issue orders and to queue up at the bank to transfer the proceeds of fines and court costs paid by convicted persons.

This has seriously undermined the judicial officers because they have to perform many responsibilities in accordance with their job descriptions and travel a lot. This situation has emerged because there is no balance between the distribution of work and available resources. This situation is reversed in the Oecusse District Court which has one judge and six judicial officers.

## **2. The Dili District Court**

The situation here is almost the same as the other courts. For example the Dili District Court does not have enough laptops for judges because some of them are damaged and there are no laptops for trainee judges. The Dili District Court also has problems with Air Conditioners in the main court room which do not function properly and have been broken for a long time. The broken Air Conditioners make a lot of noise during trials which disadvantages visitors and affects their ability to properly understand and follow proceedings because they can't hear properly.

The Dili District Court also has a problem with limited printers and toner for the judges in both the criminal section and the civil section. This is a problem because the judges dealing with case files have to print files every day but they need to use a small printer which is not proportionate to the needs of the court. Also, the criminal and civil sections have to wait to print all of the cases because there is only one large printer. The printer has been rented by the court from a private company since 2017 and when it is broken they have to wait for it to be fixed. There is also a problem with the toner for the printer because often the needs of the court are not met because the quantity of toner they receive does not match their request. For example, there are two sections that normally use 10 toner refills every month. However the Court of Appeal is only able to provide five toner refills every month.

Other problems noted by JSMP include the fact that not all trials at the Dili District Court can be recorded because only three of the court rooms have a recorder. In fact, the Dili District Court has five court rooms and recorders for the other two have been broken for the last two years. In addition, even though the Dili District Court has five court rooms, sometimes there are many cases and the parties have to wait because all of the court rooms are full.

Other problems experienced in 2018 included the Dili District Court not having any petty cash to respond to urgent circumstances in the court such as fuel for operational cars when inspecting a scene or the mobile court, to buy food for the parties because they have to adjourn a hearing and to purchase materials such as light globes, fix taps and other needs at the court. Also, the Dili District Court only has two cars and eight motorcycles for operational needs to cover the districts of Dili, Ermera, Liquica and Aileu. These facilities are insufficient because the Dili District Court is in the capital city and its jurisdiction covers districts with a large number of people and many cases.

### **3. Baucau District Court**

The Baucau District Court lacks computers for judicial officers in the criminal section, civil section and central area because the Baucau District Court has 18 judicial officers<sup>4</sup>. Also, as discussed above, the Suai District Court has just six judicial officers. JSMP believes that the distribution of resources is unequal and unrealistic. JSMP observed that this situation has led to two judicial officers having to share one computer to type up court transcripts and other official documents. The Baucau District Court also only has one car and six motorcycles for operational needs, but its jurisdiction covers districts that are very large because in addition to Baucau, the court serves Viqueque, Lospalos and Manatuto.

JSMP has also observed that the office space provided to judges and judicial officers is very cramped. In addition, there is no room for the defence, prosecution and parties and also no place to keep objects of crime. In 2016 the number of judges at the Baucau District Court increased to seven<sup>5</sup> from a total of six over the last few years and there are only three office spaces allocated to judges, so from 2016 two judges have been sharing a room and their work space was very limited and case files are piled up. This situation emerged because judicial officers in the criminal section or civil section have had to work in a very limited space.

The Baucau District Court also does not have a separate area to store objects of crime because from 2015 onwards the Baucau District Court decided to keep objects of crime in the court room and cover them up with ply board. The Baucau District Court also does not have a waiting room for witnesses and victims as well as for public defenders/private lawyers, prosecutors and parties. JSMP discovered that often public defenders and prosecutors have to wait in front of the court for trials to begin.

It is very important to have a dedicated waiting room for lawyers/prosecutors because before going into a trial they have to prepare themselves and the lawyers/public defenders need to talk with their clients and public prosecutors also need to talk with victims or witnesses before a trial.

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<sup>4</sup> The number of judicial officers increased from 14 to 18 in 2018

<sup>5</sup> The number of judges increased two years ago from 4 to 7

#### **4. The Oekusi District Court**

JSMP noted that for more than ten years the Oekusi District Court has only had one judge who is also the judge administrator in this court, and six judicial officers. This allocation of human resources is very unequal and has placed a large burden on the judge due to this unequal distribution of resources. On many occasions JSMP has visited and spoke with the judge administrator of the Baucau District Court, João Ribero, who has shared his concerns about the management and distribution of resources versus the work load. This is not favourable for cases that need to be heard by a panel of judges because it takes time to make arrangements with judges from Dili and for them to travel. In previous years sometimes the Public Prosecution Service in Oekusi has had two prosecutors and only one judge. This has meant that the judge has to work extra hard to manage his time and schedule trials. The judge is not actually dealing with limited resources, but in fact a complete lack of resources.

Similar to the circumstances of the Baucau District Court, the Oekusi District Court also does not have enough computers for judicial officers and translators because there are six judicial officers and there are only four desktop computers and two translators do not have a computer. This situation has meant that judicial officers have to take it in turns to work and have to delay a lot of work that they need to complete.

Also, the Dili District Court has one operational car but it has been broken down since 2015 and has been put up for auction. This has meant that many trials have been adjourned because officers cannot provide notifications when it is raining heavily. In addition, the long distances are also a challenge when providing notifications via motorcycle.

#### **5. A separate room for witnesses and victims**

JSMP has also noted that until today almost all of the courts don't have a separate place for witnesses and victims (victims) when there is a need to protect their identity in accordance with the law.

Article 4 of Law 2/2009 on Witness Protection, relating to witness concealment, states that the court may decide, either unofficially, upon the request of the Public Prosecutor, or upon the demand of the defendant or of the witness, that the testimony or the statement *must be taken by means of either concealing the witness's image or distorting his voice, or both, instead of taking the form of a public procedural act or of a cross-examination, in order to avoid the witness's recognition.*

JSMP believes that a separate room for witnesses and victims is mandatory according to the law to ensure that in cases involving gender based violence the witnesses and victims will be given favourable treatment because they will feel safer if there is no contact or interaction with defendants before a trial. Also, in important cases involving crimes characterized as corruption, homicide, martial arts groups, the court is obliged to protect witnesses to ensure their personal safety or that of their family or their possessions because they are making a contribution to the administration of justice and upholding the truth.

## 6. Recommendations

Based on the circumstances identified and discussed above, JSMP recommends for the Honourable President of the Court of Appeal to consider the following steps:

1. Request for the President of the Court of Appeal to visit the district courts or to send a team to seek information and identify existing problems and find solutions to resolve these circumstances without undue delay.
2. Ensure funding for operational items that cover the core work of the courts to ensure that trials can be carried out as per normal;
3. Draft a realistic budget plan and present these realities during the debate on the State Budget each year or hold a separate meeting with the relevant Committees at the National Parliament to present and discuss these circumstances.
4. The Court of Appeal can also identify priorities that require intervention and the provision of solutions to avoid these circumstances from occurring in the future and ensuring that the courts can work with adequate resources and in a dignified manner;
5. Reassess the resources distributed to the district courts and ensure that the courts receive support with fair conditions and avoid the unequal allocation of resources.

Cc:

1. President of Committee A of the National Parliament on Constitutional Issues and Justice
2. President of Committee C on Public Finance
3. Ministry of Legislative Reform and Parliamentary Issues
4. Ministry of Justice
5. Judge Administrator of the Dili District Court
6. Judge Administrator of the Baucau District Court
7. Judge Administrator of the Oekusi District Court
8. Judge Administrator of the Suai District Court
9. Office of the Prosecutor General
10. Office of the Public Defender
11. File

For more information, please contact:

Luis de Oliveira Sampaio  
Executive Director of JSMP  
Email: [luis@jsmp.tl](mailto:luis@jsmp.tl)  
Website: <http://jsmp.tl/>