



Delays in Court - JSMP is concerned and urges the judicial institutions and the State to seriously address this issue

Courts are organs of sovereignty with competencies to administer justice in the name of the people, as set out in the Timor-Leste Constitution, Article 118¹. Also, everyone has the right to access the courts, and these rights are set out in Article 26 of the Timor-Leste Constitution. Based on these provisions, it is safe to say that everyone has the right to go to the courts to defend their rights and interests that are protected by the law.

Based on JSMP's observations, each year a high number of cases are registered at the district courts. This shows that the people have a lot of confidence in the formal justice system to resolve their problems with confidence that the courts will resolve their problems quickly, cheaply, fairly and transparently.

JSMP has observed this issue and everyone is majorly concerned, especially the stakeholders or those who are seeking justice, about delays in cases being tried in the courts. The problem is that some people might consider this to be a small problem and not an issue, but the consequences are very harmful on the parties, especially victims.

JSMP has observed that delays often occur because court actors do not attend trials², due to urgent issues on the day of a trial they are unable to appoint another court actor to replace them³, or they are sick⁴, participating in training,⁵ they attend but arrive late, or at the same time they need to attend to other cases and they don't manage to notify

¹ Article 118 (Jurisdiction)

1. Courts are organs of sovereignty with competencies to administer justice in the name of the people.
2. In performing their functions, the courts shall be entitled to the assistance of other authorities.
3. Court decisions shall be binding and shall prevail over the decisions of any other
4. Authority.

² https://jsmp.tl/wp-content/uploads/PrTribunálBaucauAdiaJulgamentu_TETUM.pdf

³ https://jsmp.tl/wp-content/uploads/2015/01/PrTribunálOECUSSEkazu-6-hetan-adiamentu_TETUM.pdf no https://jsmp.tl/wp-content/uploads/2015/01/PrTribunálDiliAdiaJulgamentuLaturiProsesuPENALWCJU_TETUM.pdf

⁴ <https://jsmp.tl/wp-content/uploads/2012/07/Prokurador-Substitutu-la-Marka-Prezensa-Julgamentu-Adiadu-Junu-2009.pdf>

⁵ <https://jsmp.tl/wp-content/uploads/2012/07/Prokurador-Substitutu-la-Marka-Prezensa-Julgamentu-Adiadu-Junu-2009.pdf>

the parties⁶. It is clear that delays are not just caused by court actors, but also the parties such as defendants, victims and witnesses who do not comply with a notice to attend court.

JSMP has been really concerned about this situation, especially delays caused by the courts. These circumstances remains the same, as found in the Suai District Court and Baucau District Court.

JSMP observed that at the Suai District Court, on 26 September 2022, according to the schedule hearings would be held for a case of smuggling, a case of simple offences against physical integrity and another case, however these hearings did not take pace because the public defender was not present.

in relation to the absence of the public defender, the presiding judge was very concerned and considered this to be a major issue for the court, because this delay can further increase the number of pending cases, which are already high in the court. Also, the parties such as defendants and victims have travelled a long way from the municipalities of Maliana, Same and Ainaro. They have made a big effort and also spent money on transport to and from the court, but in the end their hearing had to be adjourned.

Also, the Baucau District Court, on 23 May 2022, adjourned a trial of attempted conciliation in a civil case regarding a “land dispute” with declarative action with a view to achieving a condemnation and to claim property rights, registered as Case No. 0070/21.CVTDB, because the presiding judge was not present during the trial at the time mentioned in the notification, namely that the trial would start at 10am, however the judge only appeared in court at 15:15. The respondent and applicant and the representatives of the two parties attended court at 09:00am.

⁶ https://jsmp.tl/wp-content/uploads/PrTribunálBAUCAUOfisialJustisa_TETUM.pdf no
https://jsmp.tl/wp-content/uploads/2014/01/PrTDistritalSUAILA-NOTIFIKA-PARTE-SIRA_TETUM.pdf

Rua Beco Lakateu, Aldeia Manufuik,
Suku Colmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275
Telefone: 3323883 | 77040735
ana@jsmp.tl
www.jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

At 3pm, the respondent and his family returned to their home in Venilale Administrative Post because they had waited a long time without any information from the court in relation to the trial of their case. Then at 15:38, a judicial officer summoned the parties to an attempted conciliation that would be held on a later date. Therefore the applicant and his family were disappointed because many relatives had travelled together in a vehicle and the case was delayed without any clear reason.

JSMP noted that the parties also strongly questioned these delays because they face a range of logistical difficulties to access formal justice. Most of them live a long distance away or in areas that are geographically isolated, with roads in poor condition and trips can take a very long time, and they are vulnerable persons who don't have their own transport so they have to pay for transport, such as a motorcycle taxi or car to wait for them at the court.

JSMP understand that court actors sometimes face a range of obstacles in the performance of their duties. However it is very important to ensure that cases are processed within a reasonable amount of time to reduce the number of pending cases and in particular so the parties don't lose confidence in the formal justice system.

JSMP believes that normally when judges, prosecutors or public defenders do not attend a scheduled hearing, then need to provide justification for their non-attendance. This type of prior justification can provide each institution with some time to find another person to substitute the court actor who is unable to attend, so that the trial process can continue, and therefore to uphold the principle of conducting simple trials at the court that are speedy, affordable and accessible.

Also, in JSMP reports that were published last year, JSMP was also concerned with the impact of these delays. JSMP believes that long delays could result in victims changing their statements, and as a consequence evidence is lost, which makes it difficult to convict defendants, and in some cases defendants are acquitted because the evidence is not strong. Also, long delays can harm victims, especially in cases characterized as gender based violence, because long delays in criminal proceedings are not economically, logistically and emotionally acceptable. This lengthens the trauma suffered by victims who want to get on with their lives, especially in cases characterized as sexual violence including incest.

Rua Beco Lakateu, Aldeia Manufuik,
Suku Colmera, Administrativu Vera Cruz
Dili Timor Leste
PoBox: 275

Telefone: 3323883 | 77040735

ana@jsmp.tl

www.jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

The consequences of delays can also cause victims to abandon the formal justice sector or choose not to report these crimes from the outset. Furthermore, in circumstances where the victim is economically dependent on the defendant, these delays do not provide the victim with any options, but it is possible for them to resolve their dispute via local justice mechanisms, which normally involve 'reconciliation' with the perpetrator and staying at home.

Also, JSMP acknowledges that delays in the court are caused by insufficient human resources. Therefore, human resource issues need to be resolved, to ensure that defendants do not repeat violence and abuse and to increase the confidence of citizens that the formal justice system can provide them with timely justice.

in relation to the issue of delays, including challenges facing the courts, JSMP urges the State to continue increasing human resources in the judicial sector, and to implement the law on witness protection especially in relation to the reimbursement of expenses to provide statements, and to continue the mobile court program to bring justice closer to the people in rural areas and to therefore reduce the costs for those seeking justice. Also recommend for judicial actors to guarantee the effectiveness of serious crimes processes that involve sexual assault, child victims, and domestic violence. Thus victims of gender based violence will be encouraged to use the formal justice system.

For more information, please contact:

Ana Paula Marçal

Executive Director of JSMP

Email: ana@jsmp.tl

Telephone: (+670) 33238883 | 77040735

Website: <https://jsmp.tl>

info@jsmp.tl

Rua Beco Lakateu, Aldeia Manufuik,
Suku Colmera, Administrativu Vera Cruz

Dili Timor Leste

PoBox: 275

Telefone: 3323883 | 77040735

ana@jsmp.tl

www.jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl