



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN BA SISTEMA JUDISIÁRIU

Date: 19 August 2021

Summary of observations:

It is necessary to improve mechanisms for public health care to properly protect the rights of women and children to life during the Covid-19 Pandemic

The Covid-19 pandemic has had a massive impact on the protection and promotion of human rights, particularly the rights of women and children to life. This situation is linked to the foetus or baby inside the mother and the process of giving birth. The reality is that some babies and mothers have died purely because mechanisms for public health care in the health sector are poor, inappropriate and inadequate, based on observations and disappointment expressed by families and members of the public. Also, a report on global health status shows that in Timor-Leste the mortality rate for pregnant mothers and children under the age of five is the highest in the region of South-East Asia¹.

Based on information received, on 6 May 2021 a pregnant mother experiencing contractions went to the Kampung Baru Health Post and she was transferred by health staff to the Guido Valadares National Hospital (HNGV). When she arrived at the Dili National Hospital (HNGV) a swab test was immediately performed and found that she was Covid-19 positive. After a second test also found that she was Covid-19 positive, the pregnant mother was transferred to the isolation ward in Vera Cruz and they could not save her baby there because of poor health care and because of significant delays from the time she was at the Dili National Hospital (delayed until 2am) and there was a further delay at the isolation ward in Vera Cruz. This baby could have been saved if proper health care was provided and an operation was immediately performed when it was known that she could not have a normal delivery without having to wait for a long time².

In the second case, which occurred on 17 August 2021, a pregnant mother was experiencing contractions and she went to the Dili National Hospital to have an operation because she could not have a normal birth. When she arrived there a swab test found that she was Covid-19 positive, therefore she was transferred to the isolation ward in Vera Cruz. At the isolation ward in Vera Cruz she was not given proper and

¹ Detailed information is available on the official website of USAID: <https://www.usaid.gov/tm/timor-leste/global-health>

² Information about this accident is available from the online newspaper Tempu Timor: <https://www.tempotimor.com/latest-news/6066-bebe-mate-ih-a-izolamentu-familia-sei-lori-prosesu-tuir-dalan-legal>

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

Telephone: 3323883 | 77040735

www.jsmp.tl

ana@jsmp.tl

Facebook: www.facebook.com/timorleste.jsmp

Twitter: @JSMPtl

adequate health care and she was not operated on, and the baby died in the womb and the mother also died.

Based on JSMP's observations, the Government needs to provide certain conditions at the isolation ward in Vera Cruz to support pregnant mothers who are giving birth. Data shows that from March 2020 until 17 May 2021 a total of 15 babies were born in the isolation ward in Vera Cruz. From this total, there were 9 normal births, 3 births via operations, 3 assisted births with suction cups, 1 miscarriage and two stillbirths³.

However, JSMP believes that the Government needs to further improve the mechanisms for health care and treatment, to properly protect the lives of mothers and children when they are vulnerable or at risk in the future, not just mothers and children who are Covid-19 positive, but all children and pregnant mothers in Timor-Leste.

In relation to these circumstances, JSMP provided an opinion to Committee F of the National Parliament on 22 July 2021 on the draft law regarding the Protection of Children and Adolescents who are at Risk, and proposed that a law should be properly developed that can fully regulate issues related to the protection and promotion of the fundamental rights and freedoms of children, not just those who are at risk, to also include babies in the womb in the provisions that provide definitions of children⁴. This is because the results of research conducted by JSMP with other countries in relation to Child Protection laws has shown that the definition of children tends to refer to a person who has not yet completed 12 years of age, or from 0 – less than 12, and does not include babies who are in the womb. When calculating age, this means counting from the time the baby is born, and does not include the period that the baby is inside the womb.

JSMP proposes the following provisions:

“Article 2 Definition of child and adolescent”

1. For the purposes of this law, a child is any human being below the age of 12, *including those who are still in their mothers' wombs*, and an adolescent is someone above the age of 12 and below the age of 17”.

Also, JSMP proposes the inclusion of a provision on the obligation or duty of the State to ensure the protection and promotion of the rights of the child during child birth, with the following provision.

“Article 6 Right to life

³ Full information is available from the online newspaper Tatoli: <http://www.tatoli.tl/2021/05/17/bebe-15-moris-iha-izolamentu-ida-abortu-no-rua-mate/>

⁴ Details of this opinion are available at: https://jsmp.tl/wp-content/uploads/Paraser-Lei-Protesaun-ba-Labarik-husi-JSMP-Jullu-2021_TETUM.pdf

2. The State shall protect and promote the life of children through adequate and appropriate public policies aimed at ensuring *their birth, survival* and development under safe, harmonious and dignified conditions”.

JSMP also proposes a provision on the rights of the child to health and also the duty of the State to establish appropriate public policies and mechanisms to ensure that children enjoy their right to health, through the following provisions:

“Article 17 Right to health

1. A *child* is entitled to enjoy the best possible health status and to benefit from medical services to prevent and treat diseases and for his/her rehabilitation *as from his/her mother’s womb or prenatal stage*”.

“Article 30 Duty to protect and promote the right to life

1. The State has the duty to protect and promote a child’s right to life by establishing necessary and adequate social policy measures aimed at reducing child mortality, including abortion; promoting an increase in the average life expectancy; eliminating malnutrition; and preventing epidemics.

2. To bring this right to fruition, the State must: a. ensure that all women have access to programmes and policies on women’s health and family planning and, for pregnant women, adequate nutrition; humane consideration of their pregnancies, deliveries and puerperium; as well as integral prenatal, perinatal and postnatal care in the framework of the country’s Healthcare System”.

JSMP proposes these provisions in this law because the draft law drafted by the National Parliament does not yet include these issues. Also, JSMP believes that the Law on Child Protection should fully regulate issues or interests in relation to the child starting with babies in the womb until the age of an adolescent as set out in the law. Therefore, when the law comes into effect it will be able to properly protect and promote the rights of children.

JSMP believes that these issues should be regulated in this law because based on JSMP observations, if these matters are set out in the law, it will oblige all parties including the State or Government, to contribute towards better protecting and promoting the fundamental rights and freedoms of children. However, JSMP did not propose concrete articles in the JSMP opinion relating to sanctions for violations of this law committed by those providing public services, including health workers.

Also, acts committed by health workers who refuse to provide assistance or medical assistance in their professional capacity to a person seeking assistance that could endanger life or physical integrity, are criminalised in the provisions of Article 228 of the Penal Code, namely.

“Refusal to provide medical assistance

Any medical doctor or health professional who refuses to provide assistance in his or her professional capacity in a case involving risk of life or serious danger to the physical integrity of another person that cannot be otherwise addressed, is

punishable with up to 3 years imprisonment or a fine.”

In relation to the aforementioned cases, JSMP believes that if the relevant parties want to follow the legal process, then a thorough investigation needs to be conducted to find out if these acts fulfill the elements of a crime. This is because incidents can occur, not because of a refusal to provide medical assistance, but because of poor and inappropriate services or inadequate facilities, which affect the capacity of the parties to participate and contribute towards the proper protection and promotion of health.

JSMP hopes that the National Parliament will consider the views proposed for inclusion in the draft law on Child Protection that is still being processed by Committee F of the National Parliament, therefore, the law could properly and adequately regulate the fundamental interests of the child.

Also, the Government needs to establish the proper conditions and facilities in health centres and hospitals, to guarantee better services in the future to ensure the protection and promotion of the rights of pregnant mothers and babies.

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