

# Sri Lanka ... Let's Learn from Timor-Leste

## Visit to Dili District Court in Timor-Leste

I was interested to visit a court house when I heard that there is a list fixed with time to call up cases in courts in Timor-Leste where we never found such schedules in Sri Lankan court system.

I was given the opportunity to visit the Dili District Court in Timor-Leste on the 11<sup>th</sup> October 2017 by the **Judicial System Monitoring Programme (JSMP)** which is a leading non-governmental organisation in Timor-Leste, monitoring the Justice System and engaging in advocacy about legality, transparency, accountability, and strengthening the Rule of Law. I was accompanied by JSMP staff members Ms. Eurosia de Almeda and Mr. Jose Moniz.



The Judicial structure of Timor-Leste consists of a Court of Appeal and four District Courts. The Court of Appeal hears appeals brought from the District Courts. Timor-Leste utilizes a civil law system and is



developing its own courts system. There is no separation as criminal and civil courts and hence all cases go through the same system: first through District Courts, and then to the Court of Appeal. The Supreme Court of Justice, constitutionally to be the highest court, is not yet established. The Penal Procedure Code includes all rules for the procedure as well as evidence and sentencing. There is no death penalty in Timor-Leste and the highest punishment being a term of 30 years of imprisonment.

Entering the court house was very easy, where there was no security checking and I found a very friendly atmosphere. From the entrance, I felt the differences between the two environments as back in Sri Lanka where I often accompany the victims to courts. In Sri Lankan ordinary people are harassed and victimized in court houses by the security personnel from the time they enter the court premises. They are scolded by the security guards and the police officers for simple reasons.

There was no dress code to enter the Dili District Court. Then I recalled the Magistrate of the Mahinganaya Court (Sri Lanka) who charged and remanded a woman coming to court in a colored dress. Magistrate had ordered to put up a public notice

The image shows two copies of the court calendar for the Tribunal Distrital de Dili. The top copy is for the month of October 2017, and the bottom copy is for the month of September 2017. Both calendars list the date, time, judge's name, and the type of case to be heard.

Data	Horario	Nome do Juiz	Assunto
01	08:30	DR. ALBERTO MORAES	Julgamento
02	08:30	DR. MARIA MARGARETA LOPES	Julgamento
03	08:30	DR. ANA PAULA FONSECA	Julgamento
04	08:30	DR. MARIA MARGARETA LOPES	Julgamento
05	08:30	DR. ANTONIO KAUER	Julgamento
06	08:30	DR. FRANCISCA CORREIA	Julgamento
07	08:30	DR. ANTONIO KAUER	Julgamento
08	08:30	DR. ANA PAULA FONSECA	Julgamento
09	08:30	DR. ANTONIO KAUER	Julgamento
10	08:30	DR. ANA PAULA FONSECA	Julgamento
11	08:30	DR. ANTONIO KAUER	Julgamento
12	08:30	DR. ANA PAULA FONSECA	Julgamento
13	08:30	DR. ANTONIO KAUER	Julgamento
14	08:30	DR. ANA PAULA FONSECA	Julgamento
15	08:30	DR. ANTONIO KAUER	Julgamento
16	08:30	DR. ANA PAULA FONSECA	Julgamento
17	08:30	DR. ANTONIO KAUER	Julgamento
18	08:30	DR. ANA PAULA FONSECA	Julgamento
19	08:30	DR. ANTONIO KAUER	Julgamento
20	08:30	DR. ANA PAULA FONSECA	Julgamento
21	08:30	DR. ANTONIO KAUER	Julgamento
22	08:30	DR. ANA PAULA FONSECA	Julgamento
23	08:30	DR. ANTONIO KAUER	Julgamento
24	08:30	DR. ANA PAULA FONSECA	Julgamento
25	08:30	DR. ANTONIO KAUER	Julgamento
26	08:30	DR. ANA PAULA FONSECA	Julgamento
27	08:30	DR. ANTONIO KAUER	Julgamento
28	08:30	DR. ANA PAULA FONSECA	Julgamento
29	08:30	DR. ANTONIO KAUER	Julgamento
30	08:30	DR. ANA PAULA FONSECA	Julgamento

to say that people entering the court premises should wear only white attire, and the police officers on guard were instructed not to allow anyone to enter the court house without the white attire. I was also not permitted to enter the High Court of Kandy many times for not wearing fully white attire. Women wearing trousers or Jeans are strictly prohibited in High Courts. The dress code seems to be given the priority than the Justice delivery system in Sri Lankan court system.



After entering the court I saw how the cases were lined up and scheduled for trials. The schedule included the time, case number, Judges, brief description of the case and very few people were seated outside until their cases were called. There was no rush at all, as the trials were fixed according to the time. In Sri Lanka, we need be in court by 9.00 am however, the judges take their own time to sit on the bench and begin the hearings and no one knows how long we got to wait until our case is called.

Dili District Court comprised 04 hearing rooms and we entered one hearing room where there was a domestic violence case taken up. There was only one Judge on the bench as the gravity of the case was low. In Timor-Leste, every victim is assisted by a Public Prosecutor and every accused is assisted by a Public Defender (defense lawyer). The Judges lead the evidence and not by the Public Prosecutor or Public Defender. The Judge directly speaks with the victim, accused and other witnesses. It was really surprising to see the nature of leading evidence. The Judge spoke gently with the victim and allowed the victim to explain. Then I remembered how our victims are further victimized during the trials as often the defense counsels raise their voices and humiliate the victims. In Sri Lanka often the rape victims are labeled as prostitutes by the defense counsels at the beginning of the trials. While I was seated, witnessing the trial, I was so moved and tears rolled my eyes as I was lost in-between two extremes in the Judicial System of Timor-Leste and Sri Lanka. Why our Judicial System treat the victims like that, why the Justice System victimize and pressurize the ordinary people .... My heart was questioning my mind...



This particular case was called that day when I was in Dili District Court in Timor-Leste for more clarification and the Judgment was scheduled to be delivered the following week. After this case was over we entered another hearing room where

there were 03 Judges on the bench as the gravity of the case was serious. It was a domestic violence case. Domestic violence is considered as a serious crime in Timor-Leste. The Judges led the evidence from the accused and then the wife (the victim) was called for evidence. The accused was called for evidence once



again for more clarifications. Considering the evidence the Public Prosecutor on behalf of the victim, made his comments and requested the Judges to impose a 06-year jail term to the accused. The Public Defender made his remarks to the Judges and asked the Judges consider a lower charge as the accused, the husband happened to be the breadwinner of the family. The trial was concluded in one day and the Judgment was scheduled to be delivered within a week. In Sri Lanka, cases are

more often being postponed rather than taking up for trials. Generally, it will be at least 03 months of interval in between two calling dates. It takes more than 12 years to complete a trial and I recalled how a rape victim had to go to courts for 15 years to get Justice and I accompanied her to courts since 2005.

Many journalists were there and taking notes of the case and the trial process is being monitored by various parties including NGOs. I learnt that some cases take time to complete the trial but it should not exceed 02 years and if so it will be a controversial and bad remark. The delay of Justice could be questionable by the monitoring parties. Therefore I felt the importance to have a strong Judicial monitoring system in a country to establish the Rule of Law. I found that the **Judicial System Monitoring Programme (JSMP)** in Dili Timor-Leste is doing a tremendous job in trial monitoring, analysing and making recommendations. It has given an enormous impact and contributes to the development and improvement of the Judicial System to ensure a transparent and proper functioning court system.



JSMP has monitored several important cases involving high-level state authorities including the corruption cases involving the former Minister of Finance and the former Vice Minister of Health. In addition to observing the justice sector, JSMP also continued to observe the National Parliament.

My entire court visit was peaceful and had no pressure at all and I felt the difference and remembered the stressful situation (going out of the court) in Sri Lanka. In this court system of Timor-Leste anyone can witness the trials, can take notes, can speak to each other (not very loud) even you could use the



mobile phone in silent mood inside the court. Furthermore, microphones are fixed for each party and everyone could hear the conversations very clearly. In Sri Lanka often we don't hear anything that is spoken in the court and the cases are postponed without a proper explanation given to the parties. No one can take notes inside the court or cannot read even anything related to the case. In the beginning of my journey with the victims I

have been scolded several times by security guards and the police officers for reading the case file and taking notes while I was accompanying the victims, and now I understand that is strictly prohibited in Sri Lankan court system. We are not allowed to speak inside the court house even for an emergency. Crossed legs or crossed arms are strictly prohibited. We should remove the battery from our mobile phones when entering the Kandy High Court if not we need to keep our mobile phone at the security check. Once a man was given 08 months jail sentence for yawning inside the Mount Levinia Magistrate Court in Sri Lanka while the court was in session. I remember once the mother of a raped girl whom I accompanied to High Court of Nuwara Eliya had to take off her shoes to the command given by a police officer, reasoning it create a noise and it disturbs the court hearing. The poor mother was barefooted during the entire trial in such a cold weather and I felt guilty that I could not oppose this rude action and I might have charged for contempt of court if I argued with the police officer. Once our director Fr. Nandana Manatunga had to intervene and make a complaint to the court registrar to get permission to enter the High Court of Kandy as a mother of a political prisoner was not allowed to enter the court house to witness her own sons hearing. There are bundles of stories how our Judicial System treat the ordinary people, that I have experienced during my 12 years of journey with the victims of torture and rape by accompanying them to various courts in many parts of the country.

With all these feelings of differences of the Judicial Systems in the two countries I came out of the court house and then I was surprised to see the Judge whom I saw in the 01<sup>st</sup> trial was waiting for his car standing at the exit of the court house which was very unusual in our context.

A report prepared by the former UN Special Rapporteur on the independence of judges and lawyers, Monica Pinto, on her mission to Sri Lanka from April 29 to May 7 in 2016, at the 35<sup>th</sup> session of the UN Human Rights Council, was highly critical of the Sri Lankan Justice System. During the visit, the Special Rapporteurs met relevant ministers, government officials, members of the judiciary, the Attorney-

General, lawyers, the National Human Rights Commission, civil society members, and victims and their families.

In addition to the visit in Colombo, Ms. Pinto and her team visited Anuradhapura, Jaffna and Kandy. Our organization, the **Human Rights Office** got the privilege to organize the meeting with Ms. Pinto to meet the civil society members and victims in Kandy.



The report disclosed the political mess and the crisis of the administration of justice and given extreme valuable recommendations for reforms that would benefit the nation.

These are some highlighted issued addressed by Ms. Pinto

- Delays in the administration of justice (investigation of crimes and the indicting process)
- Judicial delays - The backlog of tribunals, in both civil and criminal matters which is dragging for 10 to 15 years, should be considered.
- Independent, impartial and transparent institutions as the administration of justice must be more transparent and democratic as transparency is an essential requisite of the Rule of Law.
- Judicial accountability as accountability is a must in a democratic society.
- Constitutional review - an opportunity to strengthen independence.
- Implementation of international human rights law. As the country has ratified a great majority of international human rights treaties however, these instruments and their related jurisprudence are not deemed enforceable at the domestic level.
- Access to justice - Access to a lawyer and other due process guarantees.
- Transitional justice - create a meaningful and participatory transitional justice mechanisms.
- Education and training for significant change
- Language problems have a dramatic impact on access to justice and respect for a fair trial and due process guarantees for Tamil speaking people.

In spite of welcoming the valuable recommendations made by the UN Special Rapporteur, the former Minister of Justice Wijedasa Rajapakse condemned and objected the report. Justice Minister Wijeyadasa Rajapakshe, delivering a statement in parliament, said the UN must act with responsibility when appointing top officials. He further said the report by the Special Rapporteur was a harm to Sri Lanka's sovereignty and the Special Rapporteur was misled by non-governmental organizations when compiling her report. The minister said the government has sent its response to the report through the foreign ministry to the UN.

It is the Justice Minister's duty to have identified these problems and taken the necessary steps to have them corrected. It is this type of practical problems that the UN Special Rapporteur is referring to and

such type of recommendations should have been welcomed, by the Government if it is concerned with improving this most backward system of administration of justice that exists in the country.

Timor-Leste is a young nation gaining independence in 2002 by the occupancy of Indonesia and working its development towards the Rule of Law, respecting the Constitution and the law, and the recognition of international law. Timor-Leste has ratified a significant number of international treaties and conventions since 2002 and has adopted the customary principles of International law in their own legislative process.

Sri Lanka has bounded by ratifying 13 major international treaties and conventions since 1980 including ICCPR and ICESR. The practical significance of ratification as an indication of a government's commitment to safeguarding



human rights and upholding the international order. Ratification assures the people of a country that current and future administrations will be subject to a continuing international obligation to guarantee specific and fundamental human rights, no matter who is in power. Also, ratification helps to strengthen domestic human rights protection by providing standards and benchmarks for national law and practice, engaging the expertise monitoring and making recommendations.

**Sri Lanka is a country that always proud of its history as a Nation and hardly adopt the best practices from other countries. Timor-Leste being a young nation achieved tremendous progress since gaining independence in 2002 and suffered some of the worst atrocities of modern times in their struggle for self-determination. Therefore, “Sri Lanka....., Let us learn from Timor-Leste and let’s make a change in the system that respect and safeguards the dignity of all persons and build a nation that establish the Rule of Law”.**



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Visit to Dili District Court in Timor-Leste  
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