



JUSTICE UPDATE

Period: 15 - 25 February 2005
Issue 6/2005

1. ADMINISTRATIVE MATTERS AT DILI DISTRICT COURT

- **Reduction in number of hearings**

As noted in JSMP's 15 February Press Release, the number of hearings being held in Dili District is less than before the East Timorese judges failed their evaluations and were no longer allowed to work in the court.

- **Changes in room allocations at the Dili District Court**

JSMP has observed that from 15 February rooms at the court have been reallocated so that the administrative sections for criminal and civil cases are now in close proximity to one another. Also, the room that was previously allocated to public defenders now functions as a civil security section and the room directly opposite is now utilized by the police, and is equipped with a telephone. The provision of a telephone in the police section will assist the police and key parties in the court to contact others in relation to judicial matters. Currently defence lawyers and prosecutors are housed in the same room located at the back on the southern side. Until now the defence lawyers and prosecutors have usually chosen to sit in the waiting room intended for court visitors rather than in their allocated rooms. But the placement of lawyers and prosecutors in the same room is somewhat confusing, given their totally separate functions. In JSMP's view, it would be more appropriate to provide them with separate rooms.

- **Public notice board**

JSMP has recommended in numerous reports since 2001 that the daily hearing schedule be posted on the white board on public display at the court to allow the public to know the schedule for trial hearings. This allows the public to know that East Timor's courts are actually operating publicly and transparently. However, the notice board is still not yet being used, meaning that in order to obtain information about the court's daily schedule it is necessary to enter the court administration section to access the schedule of hearings from the administration desk. This disrupts the work of the court clerks, as they must assist the public to access this information from the administration desk. JSMP once again recommends to the Chief of Administration that the white board on public display at the court be used to post the daily hearing schedule so as to allow the public to know what cases are on and when they are scheduled to commence.

JSMP congratulates Judge Sandra Silvestre for placing a notice with a schedule of her hearings on the notice board. We hope that this will set a good example for other judges to follow in the absence of a public schedule of all hearings being provided by the administration section of the court.

- **Scheduling of trial hearings**

An East Timorese court clerk at Dili District Court has told JSMP that international judges (through their court clerks) now inform the court clerk from the criminal section about the planned scheduling of their cases. The criminal section court clerk then contacts another court clerk from the general administrative section to notify the parties of the hearing date. JSMP considers this process to be a positive development because there appears to be good coordination between the international and national actors in relation to the scheduling of hearings and the prior announcement of such hearings. Nevertheless, on many occasions hearings and other procedures take place completely outside of what appears on the schedule of hearings. The court actors who actually appear in the hearings (especially prosecutors and lawyers) are often different to the names that appear in the schedule. Also, often hearings are not held in accordance with the time set out in the schedule.

- **National Court Clerks**

JSMP has noted a positive development in the capacity building of national court clerks. We observed two sessions at the District Court which were presided over by international judges who were assisted by national court clerks (without the presence of international court clerks). JSMP hopes that in the future this type of cooperation and coordination between international and national actors can proceed smoothly and allow the national actors to adapt and learn.

2. DIRECTIVE FROM THE PRESIDENT OF THE COURT OF APPEAL ON ACCESS TO CASE FILES

JSMP welcomes the issuance of a written directive by the President of the Court of Appeal on access to case files (Directive 6/2005, dated 4 February 2005). Pursuant to Point 2 of this Directive, those people who are not direct parties to a case (prosecutors/representatives or lawyers) are only allowed access to a case file if they have legitimate reasons which justifies such access and have obtained authorization from the judge handling that case or from the Judge Administrator for cases that have already been filed.

However, monitoring bodies and other institutions and people who wish to access information from the courts are finding it difficult to obtain documents or information as a result of Point 2 of this directive. The first difficulty arises from the requirement to demonstrate that they have legitimate reasons which justify access. JSMP recognizes that case files sometimes contain privileged information as well as information that should not be disclosed for the protection of victims and witnesses. We therefore understand the need for judges to examine requests for access to case

files. However, in JSMP's view, in regard to final written decisions (which form part of the case file), this requirement is contrary to Section 26.2 of UNTAET Regulation No. 2000/11 which states: "Upon request, the transcript shall be made available to the public". Section 26.2 does not require the public to demonstrate legitimate reasons for seeing the court transcript. Furthermore, East Timor's international legal obligations under Article 14(1) of the ICCPR, insist that judgments in trials - criminal or otherwise - must be made public except in certain narrowly defined circumstances.

JSMP further believes that the wording "legitimate reasons" is too vague and can give rise to multiple interpretations. We are worried that this will pose further difficulties for court actors wishing to apply this directive, as they will have to determine the legitimacy of every single request for every single case file that is requested. On 22 February, when JSMP requested access to a decision of one of the international judges at the Dili District Court, the judge told us we would need to demonstrate "legitimate reasons" to view the decision. When we asked for an example of what he would consider a legitimate reason, the judge said he did not know.

The second element of this directive requires the interested party to obtain authorization from the judge. JSMP wrote to the four international judges in the District Courts to request permission to view their final written decisions on 31 January. After several attempts to locate the four international judges to obtain their response to our 31 January letter we have received the following responses:

- Two judges have written letters granting approval to JSMP to view all of their decisions.
- One judge has told JSMP that according to the Directive he can only grant approval if JSMP provides a legitimate reason, in writing, for each decision that we want to see.
- One judge told JSMP that once a final decision has been rendered in a case the decision is handed over to the administrative section of the court and from that point on is not handled by the judge but by the administrative staff. He said he would not write a letter to allow us to view his decisions as his job as a judge does not involve such administrative tasks, and that anyway, we have a constitutional right to view the decisions.

JSMP is also concerned that the failure to translate this directive from Portuguese into Tetum is leading to misunderstandings in its implementation by the East Timorese court clerks. JSMP has asked a court clerk from the Dili District Court about this directive and he/she told JSMP that a request to access a decision of the court can be submitted to the judge handling that case through the administrative section of the district court. The court registry will refer such a request on to the judge handling the case to request his/her permission. This information is contradictory to that given to JSMP by the international judges.

JSMP is aware that at some levels court documents must have restricted access, as indicated in the aforementioned directive. However, it is also important for any directive to set out unambiguous criteria about which documents may or may not be accessed by the public, or have restricted access. Without such clarification, the

implementation of this directive is problematic and there is the potential for elastic interpretations.

JSMP continues to be concerned that Directive 6/2005 is effectively restricting public access to final decisions from the District Courts. We wish to once again remind the President of the Court of Appeal that the principal aim of the right to a public judgment is to ensure that the administration of justice is public and open to public scrutiny. According to the Amnesty International Fair Trial Manual, the right to public judgment is violated if judgments are made accessible only to a certain group of people or when only people having a specific interest are allowed to inspect judgments.

We are also concerned because the East Timorese court clerks at Dili District Court informed JSMP that, since the international judges commenced work in September 2004, they have only given two final written decisions to the administration section of the court. Therefore, although JSMP has now received authorization from two international judges to view their final decisions, we have only actually been able to view two final decisions. To our knowledge, at least 25 final decisions have been delivered by the court. JSMP is not sure where these other (perhaps more than) 23 final written decisions are currently located, but calls on the international judges to ensure copies of these decisions are given to the administration section of the court so they can be archived appropriately with the case files.

JSMP wishes to thank the Coordinator of the Special Panels for Serious Crimes (SPSC) for clarifying that, in accordance with Directive 6/2004, the SPSC will continue to permit third parties who have a legitimate interest in case files to see requested documents with the approval of the presiding judge.