



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

JUSTICE UPDATE

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THE PUBLICATION OF THE OFFICIAL GAZETTE

1. INTRODUCTION

The official gazette (*Jornal da República*) is the official means by which the Government of Timor-Leste communicates information to the population. Its primary role is the publication of legislation and official announcements. The gazette plays a fundamental role in the governance of Timor-Leste by maintaining a public record of the Government's acts.

However JSMP considers that there are a number of problems apparent in the current management of the gazette. This justice update seeks to consider some of those problems.

2. ESTABLISHMENT OF THE GAZETTE

The first Timorese official gazette was established by UNTAET in December 1999.¹ It was called "The Official Gazette of East Timor"² and was required to be published in English, Portuguese and Tetum, with translations in Bahasa to be made available as required.³ The Gazette was required to include all UNTAET regulations and directives as well as other specified acts of Timorese institutions or acts of public interest.⁴ No specific rules were provided regarding the method or timing of publication and distribution, but it was stipulated that the gazette was to be published "in a manner that ensures its wide dissemination by public announcement and publication."⁵

On independence the new Constitution of Timor-Leste was drafted so as to provide that:

¹ UNTAET Regulation 1999/4 On the Establishment of the Official Gazette of East Timor.

² Section 1 UNTAET Regulation 1999/4.

³ Section 3(1) UNTAET Regulation 1999/4.

⁴ Section 5 UNTAET Regulation 1999/4.

⁵ Section 3(1) UNTAET Regulation 1999/4.

- legislation and decisions must be published by the organs of sovereignty⁶ in the official gazette;⁷
- the failure to publish such legislation or decisions renders them “null and void”.⁸

The first piece of legislation passed by the new Timor-Leste Parliament after independence noted the constitutional requirement to publish regulatory acts in order to avoid their invalidity,⁹ and as a result sought to establish a means for such official publication. It established the “Official Gazette of the Republic of East Timor”.¹⁰

The first edition of the Official Gazette was published on 4 June 2003.¹¹

3. SOME ISSUES OF CONCERN THE ACCESSIBILITY OF THE GAZETTE

3.1. Language of publication

Until the present time, the Official Gazette has been published in Portuguese, with only a few exceptions.¹² JSMP is concerned that this situation presents a real barrier to the ability of the Official Gazette to achieve its fundamental purpose of communicating the Government’s activities. Furthermore, JSMP believes that this may be in violation of the Timor-Leste Constitution.

According to available statistical data, only a very small percentage of the Timorese population knows Portuguese. According the report from UNDP in 2006, less than 5% of Timorese can understand Portuguese.¹³ It is true that Portuguese speakers are disproportionately represented in government and the courts, which constitute an important part of the Gazette’s audience. However JSMP believes that it is important for the Gazette to be accessible to as much of the Timorese population as possible, particularly members of civil society who may not be literate in Portuguese. As a result of the Gazette being published only

⁶ The organs of sovereignty are defined by the Constitution as comprising the President of the Republic, the National Parliament, the Government and the Courts: section 67 Timor-Leste Constitution.

⁷ Section 73(1) Timor-Leste Constitution.

⁸ Section 73(2) Timor-Leste Constitution.

⁹ Preamble RDTL Law 1/2002 Publication of Acts.

¹⁰ Section 1 Law 1/2002.

¹¹ Official Gazette, Part I, No. 1, 4 July 2003.

¹² Three editions which contain significant legislation have been reproduced in Tetum separately: these are Official Gazette, Part I, No. 5^a, 14 April 2004 which published Law 3/2004 on Political Parties and Government Decree Law 5/2004 on Communal Authorities; Official Gazette, Part I, No.10^a, 16 June 2004 which published Law 8/2004 on the Civil Service; and Official Gazette, Part I, No. 24A, 1 December 2005 which published Government Decree Law 13/2005 Approving the Criminal Procedure Code in Tetum.

¹³ United Nations Development Program, *Timor-Leste Human Development Report 2006: The Path out of Poverty*, January 2006, page 8.

in Portuguese, JSMP believes that many people are unable to effectively access information on laws and public announcements, including private lawyers, some judicial actors,¹⁴ police officers, civil servants, members of civil society, and many others.

JSMP is also concerned that the failure to publish the Gazette in Tetum may constitute a violation of the relevant Parliamentary Law.

The Law on the Publication of Acts states that the Official Gazette shall be published in the two official languages.¹⁵ Under the Timor-Leste Constitution, the official languages are Tetum and Portuguese.¹⁶ The law provides that the Gazette is to be published with the Portuguese and Tetum versions side by side on facing pages.¹⁷

The Law also provides for a transitional regime. It states that until 31 December 2002, the Official Gazette may be published in Portuguese language only.¹⁸ Where the acts are published in Portuguese language only during the transitional period, a summary of the acts may be prepared and published in Tetum, without prejudice to the publication of the act in full in Tetum at a later date.¹⁹

However JSMP notes that although the deadline of 31 December 2002 has been passed, the Official Gazette continues to be published in Portuguese only. This is in clear violation of the requirement under the Law on the Publication of Acts that the Gazette be published in both Portuguese and Tetum.²⁰

JSMP understands that translation of laws into Tetum is a difficult and costly enterprise. However it is necessary that this be undertaken in order to comply with the law and enhance access to the law by the population, including those working in the Government and legal sectors. JSMP also believes that attempts

¹⁴ Although the courts in Timor-Leste are still comprise mostly of international judicial actors who speak Portuguese, an increasing number of Timorese judicial actors will be beginning work over the coming years. Although knowledge of Portuguese is a requirement for these persons, many are learning Portuguese while training and would be assisted by having access to laws in both Portuguese and Tetum.

¹⁵ Section 3(1) Law 1/2002.

¹⁶ Section 13(1) Timor-Leste Constitution.

¹⁷ Section 3(2) Law 1/2002. JSMP notes that the practice, occasionally undertaken to date, of publishing separate editions in Tetum (see footnote 12 above), does not comply with this requirement.

¹⁸ Section 22(1) Law 1/2002. JSMP notes that in UNOTIL's English translation the provision reads: "By 31 December 2002, the Official Gazette... may be issued in the Portuguese language only." [emphasis added] JSMP believes that this is a translation error. The Portuguese version reads "Até 31 de Dezembro de 2002...." [emphasis added] which JSMP believes should be translated as "Until 31 December 2002...".

¹⁹ Section 22(2) Law 1/2002. JSMP notes that this provision did not require the publication of summaries in Tetum but merely permitted it. JSMP has not been able to find any examples of the publication of such summaries.

²⁰ Section 3(1) Law 1/2002.

to publish in Tetum are in line with the Constitutional directive that the state should value and develop Tetum and other national languages.²¹

3.2. Timing and method of publication

JSMP is also concerned that the Official Gazette is not published in the manner and with the regularity required by statute.

The relevant Law requires that the Official Gazette be published “on a weekly basis”, with Part I (which includes specified items such as laws, treaties, decrees, parliamentary and government resolutions and other instruments of similar importance²²) to be published on Wednesdays, and Part II (which includes opinions, notices, appointments and dismissals and other items required to be published by law²³) to be published on Fridays.

JSMP notes that in practice the Official Gazette is published as directed with Part I published on Wednesdays and Part II published on Fridays. However editions are not published every week.

JSMP also notes that the Law requires the Official Gazette to be published in an “electronic format”.²⁴ Access to this version is to be regulated by Government decree.²⁵ However no such electronic version has ever been created. Although the transitional provisions of the Law on the Publication of Acts allows for publication by public notices until such time as it is materially possible to fully implement the present law,²⁶ JSMP does not believe this provision was intended to permit an apparently indefinite deferral of the creation of an electronic version. JSMP has been unable to find any Government Decree which regulates that version and believes that it is this problem rather than the lack of material resources which is preventing the creation of an electronic Official Gazette.

3.3. Other issues hindering effective dissemination

JSMP considers it particularly important that the Official Gazette should be readily available to those working in the civil service and in the court system. For this reason, it would be beneficial if the Gazette was provided free of charge to the parliament, government ministries, courts, the prosecution service, the police and other institutions which require regular and dependable access to laws and public announcements. At the present time this is not provided for by legislation and all such institutions must pay for copies of the Gazette.

²¹ Section 13(2) Timor-Leste Constitution.

²² Section 5(2) Law 1/2002.

²³ Section 5(3) Law 1/2002.

²⁴ Section 1(2) Law 1/2002.

²⁵ Section 1(2) Law 1/2002.

²⁶ Section 22(4) Law 1/2002.

JSMP notes that while the Law requires that judicial bodies, public services, local organs and concessionary companies are to be required to subscribe to Part I of the Gazette,²⁷ the realisation of this requirement may be hindered by the fact that these institutions are required to pay for the Gazette.

Although the price of the Official Gazette is relatively low, JSMP notes that purchase of the Gazette by public bodies may be hindered by:

- the fact that they may need to purchase many copies; and
- the fact that the price of the Gazette alters with every edition, depending on its size,²⁸ and the Gazette is not always published at regular intervals, therefore making it difficult for organisations to budget for the purchase of the Gazette.

JSMP therefore recommends that the Parliament consider amending the law in order to provide for a standardised Gazette price, and to allow it to be provided free of charge to certain specified public institutions.

4. ITEMS NOT PUBLISHED IN THE OFFICIAL GAZETTE

According to the Timor-Leste Constitution, the failure to publish legislation and decisions from the organs of sovereignty shall render such legislation and decisions null and void.²⁹ Similarly, some instruments or announcements required to be published are expressly stated to take effect only from the date of their publication in the Official Gazette.³⁰

JSMP notes that two problems in this regard:

First, in some cases there has been a lag between the approval of a legal instrument by the relevant organ of sovereignty and its publication in the Official Gazette.³¹ Instruments are not always published in the first Official Gazette to be published after the instrument's creation. JSMP is not certain whether this is due to slow transmission of instruments from organs of sovereignty to the publishers of the Gazette or for other reasons. However this situation has the potential to create two difficulties:

²⁷ Section 19 Law 1/2002.

²⁸ A one page edition (for example that published on 5 July 2006) may cost US\$0.05, while a more substantial version can cost several dollars (for example the edition published on 21 February 2006 ran to over 100 pages and cost \$5.30).

²⁹ Section 73(2) Timor-Leste Constitution.

³⁰ Section 9(2) in respect of international treaties and section 98(4) in respect of the invalidation by Parliament of Government legislation.

³¹ This lag is often around a month in duration but can be longer. For example, the Government Decree Law which created the Civil Procedure Code was approved by the Council of Ministers on 6 December 2005 and not published in the Official Gazette until 21 February 2006 (see Official Gazette Part I, No. 4, 21 February 2006).

- Where (as is most commonly the case) the date of a law's entry into force is dependant on the date of publication in the Official Gazette,³² an administrative body (the publisher of the Gazette) effectively has the power to determine when a new law becomes effective.
- Where a law is to be valid from a specified date³³ it is not clear what the effect would be where the law has not been published by the specified date.

In order to address this problem, legislation could be amended to require that instruments to be published in the Official Gazette are published within a set time limit (for example one or two weeks).

Secondly, some types of documents which arguably should be published are not published as a matter of practice. According to the Timor-Leste Constitution, "legislation and decisions shall be published by the organs of sovereignty in the official gazette."³⁴ JSMP understands this to mean that all legislation and decisions taken by organs of sovereignty (the President of the Republic, the National Parliament, the Government, and the Courts³⁵) are to be published in the Official Gazette. Unfortunately the Constitution does not define "decision" or "legislation" and the former in particular may be difficult to define.

However despite some ambiguity in this area, JSMP believes that there are reasons to believe that instruments required to be published, according to the Constitution, are not being published. For example, not all decisions of courts are published in the Official Gazette. Only decisions of the Court of Appeal are published. Although the Constitution specifically provides that decisions of the Supreme Court are to be published in the Gazette,³⁶ JSMP does not consider that this impliedly excludes a requirement to publish the decisions of other courts. Rather, since the courts are organs of sovereignty,³⁷ there are good grounds for considering that their decisions are required to be published in the Official Gazette. JSMP believes that the absence of any other publication which contains decisions of the courts, there are extra policy grounds for this interpretation.

JSMP notes that according to the Timor-Leste Constitution, instruments required to be published in the Official Gazette which are in fact not published are thereby rendered null and void. JSMP therefore recommends that the organs of sovereignty, and particularly the courts, undertake a consideration of the relevant

³² For example, the Decree Law creating the Civil Procedure Code was stated to come into effect on the day after it was published: see article 5 Decree Law 1/2006 which Approves the Civil Procedure Code.

³³ This practice is uncommon but has sometimes been used: see for example Government Decree Law 13/2005 which Approves the Criminal Procedure Code, article 5 of which provided for the Law to take effect from 1 January 2006.

³⁴ Section 73(1) Timor-Leste Constitution.

³⁵ Section 67 Timor-Leste Constitution.

³⁶ Section 153 Timor-Leste Constitution. At the current time the transitional judicial organization is still in effect under section 163 of the Timor-Leste Constitution and the Supreme Court is yet to be established. Functions to be exercised by the Supreme Court are commonly assigned to the Court of Appeal.

³⁷ Pursuant to section 67 Timor-Leste Constitution.

Constitutional provisions in order to ensure that all instruments required to be published in the Official Gazette are in fact published.