



PUBLIC ACCESS BARRED TO DECISIONS FROM DISTRICT COURTS

On 24 January 2005 JSMP was informed by court clerks in the Dili District Court that all information in case files, including final decisions, were no longer publicly available. The court clerks informed JSMP that they had received a verbal instruction to this effect from the President of the Court of Appeal, via the Chief of Administration in the Court of Appeal.

On 25 January, following JSMP's questioning of the basis for this instruction, the Chief of Administration informed us that in order to gain access to decisions and other information about cases, JSMP and other interested members of the public will have to: write a letter to the judge requesting access to a particular final decision (citing case name and number). The judge will then decide whether to allow access or not. The judge will inform the court clerk whether or not the person who requested access is allowed access to the decision.

In JSMP's view this new process is flawed for a number of reasons.

First, it severely restricts public access to decisions of the district courts. Such a restriction of access conflicts with Timor Leste's obligations under Article 14(1) of the ICCPR and also violates the spirit of Section 28 of The Transitional Rules of Criminal Procedure (UNTAET Regulation 30/2000 as amended by 25/2001) which provides for public hearings.. According to Article 14(1) of the ICCPR, judgments in trials - criminal or otherwise - must be made public except in certain narrowly defined circumstances. 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. 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 a judgment.

Second, the process is unnecessarily cumbersome and creates unnecessary work for the judges and court clerks, as well as those requiring access to decisions.

Third, the court clerks think they are no longer allowed to release any information about a case, including the case number or case name. Since the court clerks in the district courts usually do not write up the court timetable on any publicly accessible board, it is now no longer possible for the public to find out when trials are scheduled (unless the public requests this information from the prosecutor, defence lawyer, or judge).

It does not appear that the Chief of Administration has informed the judges about this new process, since one international Judge told JSMP on 24 January that all of his decisions were made publicly available and could be obtained simply by requesting the court clerk to provide access to the court file. This further complicates the issue, as it is not possible to make a written request, without the case name or number.

The confusion caused by this new instruction highlights the problems that can be caused when the President of the Court of Appeal and/or the Chief of Administration (it is still not clear to JSMP who actually issued the instruction) release verbal, rather than written directives.

JSMP calls on the President of the Court of Appeal and the Chief of Administration to withdraw the instruction as it is against Timor Leste and international law, and will severely restrict public scrutiny of the justice system.