



DILI DISTRICT COURT – WEEKLY SUMMARY
9 November to 15 November

The following information is based on trial monitoring conducted by JSMP at the Dili District Court. At the end of November a more complete report will be released compiling all data gathered for the month of November. It will also contain analysis and commentary about the issues which have arisen throughout the course of the month in the Dili District Court.

- **CASE LOAD-**

Criminal Hearings which proceeded	8
Civil Hearings which proceeded	4
Adjourned Hearings-	15
Total Number of Hearings Scheduled	27

- Some adjournments were agreed in chambers – in other cases the Court convened but the proceedings had to be adjourned for a variety of reasons.

- **REASONS FOR ADJOURNMENT**

Prosecution unavailable/unprepared-	3
Defence unavailable/unprepared	1
Judge(s) unavailable	1
Accused failed to appear	1
Witness failed to appear	1
Civil defendant unavailable/unprepared	4
Multiple players unavailable --	4
Miscellaneous	0
TOTAL	15

- These adjournments occurred because the prosecutor handling the case was Mr Alcino Baris. He was appointed as Vice Minister for the Interior last week and the Court decided that, accordingly, he could not appear as a Prosecutor.

-- On two occasions both the prosecutor and public defender did not appear because they were involved in hearings before the Investigating Judge.

- NUMBER OF ACCUSED PERSONS WHO CAME BEFORE THE COURT WHO ARE IN DETENTION: 7 of 27 accused

- TYPES OF CRIMINAL OFFENCES LISTED BEFORE THE COURT

Negligence resulting in death (car accidents)	2
Assault	6
Murder/attempted murder	2
Rape/sexual offences	3
Theft/Property damage	1
Fraud	1
Traffic offences	2
Carrying a concealed weapon	1
TOTAL	18

- Some cases involve multiple charges. However, the case is categorised according to the primary and most serious charge.

- NUMBER OF PROCEEDINGS BEFORE THE INVESTIGATING JUDGE

Initial review hearings (within 72hrs of arrest)	9 (some with multiple suspects)
Detention review hearings	0
Requests for arrest warrants	5 (in total 20 warrants were issued)
Requests for search & seizure	0
Requests for Exhumation & Autopsy	3 (requests were made together with requests for arrest warrants)
TOTAL	17

- Other requests for arrest warrants may have been made post-arrest and as part of the initial review hearing.

- OUTCOME OF PROCEEDINGS BEFORE THE INVESTIGATING JUDGE

Detention order	8
Conditional Release Order	6
Release Order	1
Miscellaneous	1-
TOTAL	16 suspects

- One suspect brought before the Court was a fourteen year old minor. The Court ordered that the police find suitable accommodation for him in a facility better able to cater for the needs of minors than Becora.

DILI DISTRICT COURT MONITORING – Summary of Cases 9 to 15 November 2002

9 - 10 November 2002

- **Hearings**

There were no hearings over the weekend period.

- **Proceedings before the Investigating Judge**

There were no proceedings before the investigating judge over the weekend period.

11 November 2002

- **Hearings**

Criminal Case 30 of 2002 – (Public Prosecutor v Aderito Lemos Martins)

The case was listed before Judge Rui Pereira dos Santos. The case involves an alleged fraud/misappropriation by an employee. The case was adjourned because the prosecutor with carriage of the matter is Alcino Baris. He was appointed last week as the Vice Minister for the Interior and has therefore been declared by the Court ineligible to work as a prosecutor. The case will be relisted when it has been given to another prosecutor to proceed with it. The accused is on conditional release.

Criminal Case 89 of 2002 (Public Prosecutor v Alcino F Da Silva)

The case was listed before Judge Carmelita Caitano Moniz. The accused is charged with carrying a weapon without permission. The case was adjourned because the judge was ill. The accused is on conditional release.

Criminal Case 83 of 2002 – (Public Prosecutor v Ronaldo Mara and Duarte Soares)

The case was before Judge Edite Palmira Dos Reis. The accused is charged with assault and property damage. The incidents were alleged to have occurred in Bobonaro on 31 December 2001. The case was adjourned because neither the prosecution, defence or accused appeared. The matter is now listed for 19 November at 10am for witness examination. The two accused were arrested on 4 April 2002 after a period of detention they were released on 16 August 2002.

Civil Case 39/PDT.06/2001 – (Robert K Mac Donald v Perusahaan Api Resources)

The case was before Judge Rui Pereira Dos Santos. The plaintiff was the former General Manager of the defendant company. The plaintiff claims that after he

resigned he was not paid the monies he was due. The case was adjourned because there was no appearance for the defendant. The Judge was ready to read his judgement but did not, both because the defendant did not appear and because he is waiting for a report on the condition of certain assets from the defendant. The judge adjourned the matter to 22 November 2002 and said that he would proceed to judgement on that date regardless of whether the parties were present and regardless of whether he had received the report.

Civil Case 48/PDT.06/2001 – (Maria Olinda Quintas v Jonathon Lay and Jerry Loh)

The case was before Judge Rui Pereira Dos Santos. The plaintiff is claiming compensation under s1359 of the Civil Code from the defendants as a result of damage to her reputation caused by the illegal actions of the defendants. Essentially, the defendants required the plaintiff to make her bag available for inspection when she left a Dili store. The judge gave judgment in the case. He decided that the action had been brought against the wrong defendants. He decided that it had not been established that the named defendants were any more than store employees. The Judge ruled that the action should have been brought against the company who owned the store or perhaps its directors but not ordinary employees. The Judge found that the evidence tended to show that there had been a violation of law which might warrant a claim for compensation but said that he did not need to finally decide that matter given the circumstances. The Judge advised the plaintiff that she could recommence the proceedings, naming the correct defendant, but that it would be a new proceedings with a new judge.

Civil Case 06/2002 – (Ensul v SAPT)

The case was before Judge Aderito Tilman. The case involves a property dispute over ownership of a warehouse. At the request of the parties the matter was adjourned to a date to be advised by the Court because the parties were still in negotiations. This was the second hearing of the matter. The first hearing was postponed so that the defendant could find a lawyer.

Civil Case 35/2002 – (Theo Kui Tuin v Luis Oliviera)

The case was before Judge Atonio Helder V Carmo. The case involves a debt dispute. The plaintiff claims that the defendant contracted to buy a car and has possession of the car, but has not paid for it. The defendant did not appear. This is the second hearing in the matter. The defendant did not appear at the first hearing either. If the defendant fails to appear a third time, the matter will be adjourned for judgment in his absence.

Civil Case 05/2002 – (John Bapiste v Border Control)

The case was before Judge Edite Palmira Dos Reis, Aderito Tilman and Jose Da Costa Ximenes. The case was adjourned because the lawyer who had been representing Border Control (who was from the Public Defender's Office) had not filed a formal letter withdrawing from the case. The new legal representative for Border Control was from the Public Prosecutor's Office. The Court acknowledged

that the Public Prosecutor's Office was the natural representative for the State but found that given that another lawyer officially still had carriage of the matter, the proceeding could not continue until he officially withdrew. The case was re-listed for 26 November 2002. There were witnesses present and ready to give evidence who will now have to come back at the new date.

- **Proceedings before the Investigating Judge**

Case One – The first case was one of the cases that had been brought to the Court last Friday but was not heard because, by the time there was a judge available, it was after five. As a result by the time the case was heard today the suspect had been detained over 72 hours. The case came before Judge Constancio Basmeri. The suspect was alleged to have committed adultery and/or rape. The Judge decided that adultery was no longer considered a crime under East Timorese law. The Judge also decided that there was no evidence that the suspect had committed rape. The suspect was therefore released unconditionally.

During the course of the day, the prosecutor had requested that the police get the suspect's passport from his home. The accused is an Indonesian citizen. Although the suspect was unconditionally released, the prosecutor intended to keep the passport to ensure that the suspect attended a meeting with the family of the "victim" later that week. There was no mention of any of these matters in the release order. Judge Basmeri explained that the prosecutor wanted to register the passport number with the Indonesian Embassy to inform them that the suspect had an unresolved civil matter in East Timor and should not be able to leave. The Judge expressed the view that the suspect had been unconditionally released, there was no evidence of any crime, and therefore there was no apparent need or basis for the prosecutor's further involvement.

Case Two – The second case was also a case which was left over from Friday because it had not been dealt with at that time. Therefore this suspect had also been held beyond the 72 hour period. The suspect, who had previously been jailed for assaulting his wife, was alleged to have returned to her house and, not finding there, to have caused considerable damage to the property and killed the animals there. The matter was before Judge Constancio Basmeri. The Judge found that given the risk of re-offence, given that the suspect had admitted the offence and given that the suspect could not return to his wife's home – it was appropriate to order that he be detained for 30 days.

Case Three – Two FDTL recruits suspected of having assaulted two policemen were brought before the Judge Sergio Dias Quintas. They had been arrested on Friday. The Judge ordered that both suspects be detained for a period of thirty days while investigations into the matter continued. There was a considerable police presence and the hearing room was crowded with police. The suspects were represented by the Public Defenders' Office. There was no obvious, and certainly no uniformed, FDTL presence.

Case Four – An arrest warrant was issued for two men suspected of committing assault. The matter was alleged to have occurred in Ainaro. There was no hearing in the matter. Requests for arrest warrants are made in chambers by the prosecutor.

12 November 2002

- **Hearings**

Tuesday 11 November was a public holiday. There were no hearings.

- **Proceedings before the Investigating Judge**

Case One – Judge Constancio Basmeri was called to issue an arrest warrant for nine men suspected of having committed an assault. The Judge said that although it was a public holiday, because the police had come from Same to request the arrest warrant, it seemed impossible not to entertain the request.

13 November 2002

- **Hearings**

Criminal Case 48 of 2002 – (Public Prosecutor v Nelson Dos Santos)

The case was listed before Judge Edite Palmira Dos Reis. The accused is charged with negligence causing death. The charges arise out of a car accident in Maliana. The case was adjourned because defence lawyer was not present. The Defendant himself was present. The hearing had been adjourned particularly so that some “last minute” defence witnesses could be called. The defence witnesses were present. The Judge adjourned the case to 18 November 2002 for the examination of defence witnesses and for the prosecution to present their closing arguments. The accused is not in detention. Although he was previously been in detention for two months.

Criminal Case 30 of 2002 – (Public Prosecutor v Manuel Das Concelao)

The case was listed before Judge Rui Pereira Dos Santos. The accused is charged with statutory rape/incest. The charges arise from incidents which were alleged to have occurred between 1999 and 2000. In today’s hearing the victim and mother of the victim gave evidence. The hearing was closed to the public. The accused was also asked to leave the courtroom when the victim gave evidence so that she could speak uninhibited. The accused has admitted the charge and stated that he accepted the evidence of both witnesses.

JSMP asked the accused’s defence lawyer why, if the accused had admitted his guilt, there was still a need to call witnesses. She explained that because the victim was a child it was important for the Court to satisfy itself that she was telling the truth and was not being influenced by anyone including her parents.

Criminal Case 78 of 2001 – (Public Prosecutor v Lorenzo Dos Santos and 3 others)

The case was listed before Judge Cirilo Cristovao. The four accused are charged with assault. They are alleged to have assaulted a man at a party in Ermera on 2 September 2001. The accused were indicted on 24 September 2001. The case did not proceed because the four accused did not attend. The accused are not in detention. The prosecutor was supposed to present closing statement today.

Criminal Case 47 of 2002 – (Public Prosecutor v Marcos Da Concecao)

The case was listed before Judge Rui Pereira Dos Santos. The matter was listed for judgement. The accused was charged under s406(1) and 351(1) of the Indonesian Penal Code. The accused is alleged to have assaulted a man and thrown a brick through the window of the man's rented house when the man refused to give him money. The accused had admitted his guilt. The Court found him guilty and sentenced him to 7 months and 11 days imprisonment. This corresponds exactly with the time he has already served in pre-trial detention.

There was some difficulty calculating the time the accused had spent in pre-trial detention. This was because after a period of pre-trial detention the accused was conditionally released. However, after approximately 2 months the accused was detained again because the police sighted him and believed that he was not on conditional release but rather had escaped from prison. The accused then actually did escape from jail during the mass break out. He was then returned to prison.

The matter was further complicated because the accused is also indicted, with several others, for theft committed during the mass break out. This matter has a separate file and is handled by another judge. The result is that although the accused has served his sentence in relation to the offence which was the subject of today's judgement, under another pre-trial detention order, he must continue to be detained. Fortunately, the court staff were alive to the fact that the accused had been indicted in relation to another offence and therefore was not eligible for release today. They alerted the prison to avoid confusion.

Criminal Case 116 of 2002 – (Public Prosecutor v Boabentura and 1 other)

The case was listed before Judge Antonio Helder Carmo. The accused are a husband and wife alleged to have assaulted a female relative in Liquisa. According to the court staff the case did not proceed today because the Judge was occupied with his Special Panels duties, the prosecutor was also unavailable and the two accused did not appear. Both accused are on conditional release although it appears that they were previously detained from 17 June 2002 to 2 July 2002. The two accused did not appear at the last listed hearing either. So far the case has not progressed beyond the reading of the indictment.

Criminal Case 112 of 2002 – (Public Prosecutor v Celestino Ribeiro)

The case was listed before Judge Cirilo Cristovao. The accused is charged with attempted rape. The case did not proceed today because the prosecutor with

carriage of the matter was Mr Alcino Baris. Since his appointment as Vice Minister, a new prosecutor has not been appointed. The accused is in detention and has been since 15 March 2002.

Criminal Case 40 of 2001 – (Public Prosecutor v Sergio Lobo)

The matter was listed before Judge Pereira Dos Santos, Judge Carmelita Caitano Moniz and Judge Cerilo Cristovao. The accused is charged with serious assault. It is a domestic violence case. He was indicted on 6 August 2001. The case did not proceed today because the Public Prosecutor who had carriage of the matter was Mr Alcino Baris. The case has been given to a new prosecutor but he did not have sufficient time to prepare and therefore had not called witnesses for today's hearing. As such the matter was adjourned without a hearing.

Civil Case 24 of 2002 – (Jose AEM Soares v Zeca Soares)

The matter was listed before Judge Edite Palmira Dos Reis. The case involves a dispute over land ownership. The defendant and his lawyer did not appear for the second time. The matter was adjourned until Monday 18 November 2002. If the defendant does not appear one more time the matter will be listed for judgement.

- **Proceedings before the Investigating Judge**

Case one – Judge Constancio Basmeri issued two arrest warrants and an exhumation and autopsy order in relation to a 1999 serious crimes murder investigation in the Dili area.

Case two – A man who was arrested on 12 November 2002 on suspicion of committing assault and property damage was brought before Judge Joao Henrique. He was released on the condition that he report twice weekly to the police. The order is effective for two months. The judge explained that one reason for conditionally releasing the suspect was that he is at school and if he were to be detained he would miss classes and exams.

Case three – A man suspected of stealing a camera, clock and money from a house was brought before Judge Joao Henrique. JSMP is not sure of the arrest date but the Judge said that the 72 hour period had not expired. The man admitted the offence but said he was drunk. He was released on condition that he report to the police twice weekly for two months. The judge explained that because the maximum punishment for the offence was less than five years, the suspect had to be released despite his admission.

Case four – A 17 year old minor was brought before Judge Joao Henrique. The minor's suspected negligence while driving was alleged to have caused an accident in which one person was seriously injured. The accident was alleged to have occurred in Ermera. The judge ordered that the minor be detained for 30 days. The Judge said that in cases involving serious injury, it was necessary to order detention even when the suspect was a minor.

Given that the maximum charge the suspect could face would be negligence causing serious injury, which has a maximum sentence of 2 and 1/2 years for a minor, (ie half the maximum for an adult) then, other arguments aside, this suspect would fall into the same category as the suspect in case three. However, the same reasoning was not applied.

14 November 2002

- **Hearings**

Criminal Case 146 of 2002 – (Public Prosecutor v Greg Archer)

The case was listed before Judge Cerilo Cristovao. The accused was charged with a number of offences under the UNTAET Regulation 8/2001 (The Traffic Code). The accused was an Australian citizen. He was not represented and spoke through an interpreter. The accused was said to have been speeding and driving an unregistered car. He was also said to have taken his car from the police yards after it was impounded, without permission. These matters had occurred over the course of the previous week. The matter was dealt with quickly. The prosecutor read the charge and the accused was given a chance to respond. The judge fined the accused \$150 and ordered that he pay the court costs of \$5.00.

Criminal Case 144 of 2002 – (Public Prosecutor v Greg Lapolalan)

The case was before Judge Cerilo Cristovao. The accused was charged under UNTAET Regulation 8/2001 (The Traffic Code). The accused was said to have caused a minor accident in which no one was hurt. The accused admitted his fault and took no issue with the facts as presented by the prosecutor. The Judge ordered that he be fined \$20.

Criminal Case 30 of 2002 – (Public Prosecutor v Joaquim Sampaio and 4 others)

The case was before Judge Rui Pereira Dos Santos, Judge Aderito Tilman and Judge Cerilo Cristovao. The five accused are all charged with murder in relation to the death of a man in Liquisa on 18 February 2001. Today was the first hearing of the case. The prosecutor read the indictment. The Judge asked each of the accused whether they understood the indictment. One accused answered that he did not. One of the other accused appeared uncertain. The case proceeded regardless. The presiding Judge showed to the courtroom a photograph of the victim's bloody, severed head and asked each of the five accused whether they were responsible. They each said that they were not. The accused were not told that they had no obligation to say anything in response to the question. The matter was adjourned to 2 December 2002 at 10am for the defence to reply to the indictment.

The five accused are all represented at this stage by the same lawyer. One accused (Antonio) is in detention. He has been in detention since March 2002. The other four accused were arrested on 28 February 2001 but were conditionally released after nine months. One of the conditions of their release was that they report to the Court once a week, however, their defence lawyer complained that this was too onerous for

the accused because they could not afford the return bus ticket from Liquisa. The Judge ordered that it would be sufficient for the accused to report at the next listed hearing before the Court.

Criminal Case 20 of 2002 – (Public Prosecutor v Joaquim M Sola)

The case was before Judge Carmelita Caitano Moniz. The accused is charged with assaulting another man on 19 August 2002 in Hera. The accused had admitted that he assaulted the other man. Today judgement was delivered. The accused was found guilty under s351(1) of the Indonesian Penal Code and sentenced to one month imprisonment and a six month good behaviour bond with the condition that he report to the Court once a month. As the accused had already spent one month in prison before being conditionally released – he will go straight onto the good behaviour bond part of his sentence. In sentencing the accused, the Judge noted that an agreement had been reached between the accused and the victim, that the accused was an honest man and a father.

Criminal Case 106 of 2002 – (Public Prosecutor v Zeca Dos Santos)

The case was before Judge Carmelita Caitano Moniz. The accused is charged with assaulting his half brother. The accused's father was called to give evidence. On the last occasion the case was before the Court, an issue arose about whether the accused was mentally ill and unfit to stand trial. The accused denied that he was mentally ill. The judge had ordered that the accused be examined. However, that had not occurred. (The accused's lawyer later told JSMP that there were no doctors in East Timor capable of assessing the accused.) Today, the accused father also said that the accused was mentally ill. The accused again said that it was not true. After questioning the accused's father and the accused himself, the Judge was satisfied that, whatever problems the accused might have, he was competent to stand trial because he was capable of forming an intent and understanding the consequences of his actions. The case was adjourned for the accused to give evidence on 25 November 2002. The accused has been in detention at Glenog for the past 7 months.

Civil Case 40 of 2002 – (Chung Pak Lay v Chu Lay)

The case was before Judge Edite Palmira Dos Reis. The case involves a dispute over a property which the plaintiff claims is illegally occupied and the defence claims is rented. Today the plaintiff's lawyer read his reply (*Duplik*) to the Defendant's reply (*Eksepsi*) to the claim. The matter was adjourned 18 November 2002 for the defendant to respond to the plaintiff's *Duplik*.

Civil Case 31 of 2001 – (Sipriano JG Da Costa v Marcao Ba Concancao)

The case was before Judge Guilhermino da Silva. The case involves a dispute over land. The plaintiff claims that he was given an Indonesian Government house to live in but it is being occupied by the defendant. In today's hearing the Court heard evidence from the defendant's witnesses. The matter was adjourned for judgment.

- **Proceedings before the Investigating Judge**

Case One – Judge Constancio Basmeri issued arrest warrants for seven men suspected of committing murder/torture/unlawful detention in the Dili area in 1999.

Case Two – An arrest warrant was issued for a school student who is suspected of assaulting his school teacher.

Case Three – A fourteen year old minor suspected of stealing cartons of cigarettes from a street vendor was brought before Judge Joao Henrique. The minor has been before the Investigating Judge before. He admitted to stealing the cigarettes. The Judge ordered that he be sent to a boy's home or like facility. There was no one there from the minor's family or from social services. The Judge explained that the options for dealing with minor in cases like this one are limited by the facilities available. The Judge said that sometimes the Church was asked to help.

15 November 2002

- **Hearings**

Criminal Case Number 75 of 2002 (Public Prosecutor v Quitiliano da Costa)

The case was before Renato Bere Nahak. The accused is charged with negligence causing death and serious injury. The charges arise out of a car accident which occurred in Bobonaro on 28 December 2001 during which a truck, driven by the accused, hit and killed one man and seriously injured another. During today's hearing the Prosecutor read the evidence of three witnesses. The case was adjourned until 25 November for judgment. The accused is not in detention.

Criminal Case Number 86 of 2002 (Public Prosecutor v Domingos Xavier Belo)

The case was before Judge Carmelita Caitano Moniz. The accused is charged with raping his friend's wife on 14 July 2001. The accused was supposed to give evidence and be examined during today's hearing but because the prosecutor and defence lawyer were both involved in a hearing before the investigating judge, the case was adjourned to 19 November 2002. The accused is in detention in Glenog and has been since 18 July 2001.

Criminal Case Number 27 of 2002 (Public Prosecutor v Antonio Rodrigues)

The case was before Judge Cerilo Cristovao. The accused is charged with attempted murder. On 5 July 2001, the accused was alleged to have stabbed his brother in law 13 times. The hearing was adjourned to 29 November 2002 because the witness that was called to give evidence did not appear. The accused is in detention and has been since 20 July 2001.

Civil Case Number 34 of 2002 (Maria LV Do CC v Andre NC De L)

The case was before Judge Rui Pereira Dos Santos. The case involves a claim by the plaintiff over a house and car in the possession of the defendant. The goods were

the marital property of the two parties, The plaintiff was the defendant's second wife, however, the marriage was never properly formalized. During today's hearing evidence was given by one witness each from both parties. The case was adjourned to 27 November 2002 for more witness testimony. The Judge asked the parties to ensure that by that date they have collected all the documents and official letters relevant to the case.

- **Proceedings before the Investigating Judge**

Case One – 7 more FDTL members suspected of being involved in an assault on two traffic police were brought before Judge Sergio Dias Quintas. The men were arrested pursuant to an arrest warrant issued by the Judge earlier in the week. Four of the suspects were conditionally released. An order was made for the detention of the remaining three suspects for a period of thirty days. There were a large number of police present at the hearing.

Case Two – A man suspected of assaulting his wife was brought before Judge Joao Henrique. The Judge ordered that the suspect be detained for thirty days in the interests of the investigation.