



JUSTICE UPDATE

Period: 14 - 18 February 2005
Issue 5/2005

1. APRECIO GUTERRES – THE FOURTH ACQUITTAL BY THE SPSC

On 14 February 2005, the Special Panels for Serious Crimes acquitted Aprecio Guterres, accused of committing thirteen murders in 1999. This is only the fourth acquittal by the SPSC (although the acquittal of Paulino de Jesus issued by the SPSC was overturned by the Court of Appeal, so now only three remain).

After denial of several defence motions on 18 January 2005 (see Justice Update 2/2005) the trial of this matter began on 28 January.

The first witness was the widow of one of the thirteen persons whom Guterres is accused of killing. She did not identify the defendant Aprecio Guterres as having any part in her husband's murder. The third witness, a former militia member, had told an investigator that he'd seen the main victim – Carlos Maia – stabbed by Aprecio Guterres and another person. In court, however, he stated that he had not seen Aprecio Guterres stab the victim. Rather, he stated that, after the killing, the defendant Aprecio Guterres had appeared in front of a crowd waving a bloody knife and shouting "This is the blood of Carlos Maia." He repeatedly denied, however, that he had seen Guterres stab Maia.

After the third witness's testimony, the prosecution reconsidered its case and decided not to proceed (since the indictment had been based on the testimony given by Amaral to the investigator and Amaral had changed his statement in the hearing). The prosecution said that none of the other witnesses it intended to call claimed to have actually seen the killing of Carlos Maia.

On 9 February the prosecution asked the court to withdraw the indictment against Guterres. The prosecution said it resigned from presenting other evidence and invited the court make its decision based on the existing evidence.

The defence stated that any dismissal should be without prejudice, in the form of a judgment of acquittal. The defence cited SPSC decision *Public Prosecutor vs. Florindo Moreira*, No. 19/2003. In that case the prosecution similarly requested to withdraw the indictment because crucial witnesses changed their testimony at trial. It was decided that due process and fairness to the accused required the court to allow an acquittal.

On 14 February the court ruled that Guterres was to be found not guilty. A written judgement of acquittal will be forthcoming.

JSMP welcomes the SPSC's decision to exercise its discretion to end the case without a full trial. This both legitimately saved the courts time and resources and maintains the integrity of the justice system by not undertaking trials with insufficient evidence. Although JSMP suggests this may be a belated exercise of discretion where a similar decision could have been reached at the pre-trial stage, JSMP congratulates the court on acting appropriately in the event of a prima facie lack of evidence.

2. SELECTIVE APPLICATION OF THE LAW BY AN INTERNATIONAL JUDGE IN DILI DISTRICT COURT

On 17 February JSMP attempted to monitor a sexual assault case in the Dili District Court.

Prior to the commencement of the hearing the presiding international judge questioned the age of two journalists in attendance at the court. When they both replied they were 18, the judge told them that "children" could not attend trial proceedings at the court.

JSMP would like to remind the judicial officers working in Timor Leste that, according to Article 28.1 of UNTAET Regulation 30/2000, as amended by 25/2001:

"Trial hearings shall be open to the public."

JSMP is not aware of any Timor Leste law stating that people aged eighteen years and under are not allowed to attend trial hearings.

Also in attendance in the public area of the court room were 19 Timorese trainees (former judges, prosecutors and defence lawyers) from the Judicial Training Centre. The 19 trainees explained to JSMP that the presiding international judge, who was that morning scheduled to give them academic training at the JTC, had instead decided to take them to the court to watch him presiding over the trial.

Upon opening the trial, the judge announced that the trial was closed to the public, and asked all those present in the public area of the court room, except the 19 Timorese trainees from the JTC, to leave the court.

According to Article 28.2:

"The court may exclude the public from all or part of a hearing in circumstances where: (b) it is necessary to protect the privacy of persons, as in cases of sexual offences or cases involving minors."

JSMP does not understand the international judge's application of Article 28.2 in this instance to only certain members of "the public". If the judge decides to exclude "the public" from a hearing for the reasons outlined in Article 28.2(b), then surely that means that everyone, apart from the parties to the case (the judge, prosecutor, defence, court clerk, translator, accused, and witnesses), should be excluded from the trial. Although the trainees at the Judicial Training Centre were all previously judges, prosecutors, and defence lawyers (and will presumably resume such

functions once they have completed their training at the JTC), they were certainly not parties to the sexual assault case being heard on 17 February. JSMP is thus unsure why the judge decided to selectively apply Article 28.2 to allow them to remain present during the hearing. JSMP is unaware of any law which states that, for the purposes of Article 28.2, trainees at the JTC are not members of “the public”.

JSMP therefore calls on all judicial officers to apply the law of Timor Leste consistently to everyone in Timor Leste.