



## **JUSTICE UPDATE**

*Period: 8 - 22 MARCH 2004, No. 2 / 2004*

### **Dili District Court**

JSMP was active in monitoring the Dili District Court in this period. The monitoring included several criminal and civil cases although the criminal cases attracted the most attention as they were more prominent. In a case before the Dili District Court on the 9<sup>th</sup> of March, the Public Defender complained to the Judge that she was not given access to the indictment previous to the hearing. A copy of the indictment was then only handed to the defence during the hearing. The charge was read to the accused but further process could not be made because the defence needed time to prepare for the defence. The next hearing was scheduled to the 17<sup>th</sup> of March.

JSMP had already identified in previous reports that sometimes defence counsel face difficulties in having access to documents from the prosecution. It is important, in JSMP's view, to ensure defence counsel's access to documents so as to provide the opportunity to prepare a defence, consequently preventing that hearings have to be postponed for lack of access to documents.

This period further highlighted two important issues, that is problems with case scheduling and the importance of the notification board for the public.

### Case scheduling

At the Dili District Court, the administration of civil and criminal cases are in separate rooms with separate staff. From these two separate administration units interested people can get information on case schedules and administrative matters for criminal and civil cases.

For every case which will be heard a schedule is prepared by the justice administration unit, however the process is not without problems. JSMP has identified that in the case list prepared by the administration unit (criminal and civil) there is a problem with case scheduling. For example, the hearing time for criminal and civil cases is usually set for 30 minutes. This small amount of time is perhaps not an important issue that will cause problems, but in the view of JSMP the inappropriate small amount of time allocated for hearings and having hearings so close together has the potential to increase administration problems. For example, in one case JSMP noted that the case schedule for criminal and civil cases had cases scheduled half an hour apart and with the same judge presiding over the proceedings.

Apart from that, in practice often the hearing of cases did not follow the case schedule that had been prepared by the administration unit. JSMP observed that there was often a one hour or more difference between the time a case was scheduled and the time it actually occurred. This has a big impact for the general judicial system. As an illustration, people who are busy with work and are called as witnesses in court, who are subject to an inappropriate postponement, will feel poorly treated and will possibly not want return to be a witness in the future.

JSMP has identified that factors such as judges or other court actors arriving late often becomes a factor which increases the length of trials. This lateness is also connected with the public and private obligations of court actors so that the implementation of trial times is often different from what is stated in the hearing schedule. Aside from this, the postponement of case hearings can go on for as long as a day or a week. This often occurs in the practice of the court. JSMP noted that the postponement of cases often occurred because one court actor was not ready for the hearing according to the court agenda. Factors such as the illness or the private or public obligations of one court actor often cause hearing postponements in the Dili District Court.

#### Public information board

The availability of the public notice board with sufficient case information will help those who need information about the court hearings. In the Dili District Court, there is an information board for the case schedule, both for civil and criminal cases. The problem is that this information board does not function properly. As a result, it is difficult for visitors to the court to know about the hearings. JSMP obtained information from some court actors who said that a lack of time and limited staff is the reason that the court information on the board does not function properly. JSMP is of the opinion that the availability of information on the public board is important as a means to spread information for the public and the parties. It is also consistent with the right to receive general information as provided for in paragraph 40 of the Constitution of Timor-Leste and article 2 paragraph 19 of the ICCPR. Due to that, in the future it is important to fix the information system to make sufficient information available on the public board or to create another public information system. On a technical level, the function of the information board with proper information will mean that people will not need to go into the court administration room and distract the staff from their work.

#### **Special Panel for Serious Crimes**

On Thursday 11 March 2004, the Special Panel for Serious Crimes granted conditional release to Abilio Mendes Correia. Two days earlier Correia was sentenced to 3 years in prison after being found guilty of the crime against humanity of inhumane acts. Correia had already served over two years in detention while he was awaiting trial and therefore having served 2/3 of his sentence was immediately eligible to apply for conditional release.

Although the accused was originally indicted with three counts of crimes against humanity he was only found guilty of the one crime related to his role in the beating and torture of Mariano Da Costa in Liquica district on 9 August 1999.

This case raises important issues regarding the practical implementation of the different mechanisms for achieving justice for events which have occurred in East Timor since 1974. Although the legal mandates for the CAVR and SCU are very distinct, the practical reality has shown that in some cases the line distinguishing the cases which are dealt with by the two bodies may be blurred. It is important for these realities to be examined and analysed as to the possible consequences of a differential application of justice.

On 17 March the Special Panel for Serious Crimes continued with the trial of Florindo Morreira. Of interest was the fact that a film crew with camera was present in the trial hearing. In response to an objection by counsel for Morreira to the presence of the film crew the court ruled that the film crew were permitted to be present and film on the basis that they were not interested in this particular case but the focus was on East Timor as a country. In JSMP's opinion this ruling is in direct contravention with the application UNTAET regulation<sup>1</sup> which specifically prohibits filming except for the pronouncement of final judgements in certain circumstances. Although the Counsel for Morreira indicated that she would appeal the ruling, even a ruling by the Court of Appeal that the filming should not have been allowed will not rectify the fact that filming of the trial has occurred in this case. JSMP believes there is a degree of uncertainty over the extent to which trials can be filmed and that these need to be resolved. This situation is disappointing as there was a reading of a decision by the Special Panels the following week which would have been far more suitable for filming as opposed to the hearing of witness testimony.

### **Court of Appeal**

Two significant cases came before the Court of Appeal. Both were appeals on the detention of suspects from alleged illegal groups. The most well-known is Commandante Labarik (Child Commander) the leader of former combatants group CA/75. It is alleged he forced people to pay fees for membership of his organisation, promised firearms and uniforms and threatened punishment if the fees were not paid. It is alleged that the accused breached the Indonesian Criminal Code provisions related to insulting public authority, serious theft and subversion. The defence argued that there was no legal ground for detention and therefore the accused should be released.

In a related case, seven suspects were allegedly committed rebellion, insulting public authority and extortion. It is alleged that they were obtaining money for identification cards for an organisation known as Orsenako. The defence lawyer argued there was insufficient evidence to justify detention, especially given testimony from two prosecution witnesses. At the hearing before the investigative judge, these witnesses stated that the suspects were unarmed when they asked people for money, and that guns belonging to the suspects which were obtained as evidence by the police, were taken from the suspects' houses and were not used in the incident in question.

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<sup>1</sup> Section 25.3 Radio and television broadcasting within the courtroom is prohibited, except for the broadcast of a final judgement in appropriate cases, as sanctioned by the presiding judge of the particular case.

Accordingly, the defence lawyer argued that there was no legal basis for detention. The prosecutor was not present in court to respond to this argument.

Both of these cases deserve added scrutiny due to recent media statements indicating the government wants to crackdown on "subversive" organisations such as these. In light of this, it is of utmost importance to ensure the independence of the judiciary and guarantee that these eight defendants are not unjustifiably detained and receive a fair trial.

The Court of Appeal was scheduled to hand down its decisions in both of these cases on 23 March 2004. At this hearing, the Court of Appeal decided that Commandante Labarik should be conditionally released while the 7 other defendants would remain detained. JSMP intends to closely monitor these politically charged cases and to provide further analysis of these Court of Appeal decisions.