



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAM PEMANTAUAN SISTEM YUDISIAL

JUSTICE UPDATE

Period: August 2005

Issue: 17/2005

Judicial Recess

The District Courts were in recess from 16 - 29 August 2005. This recess was granted pursuant to a directive issued by the President of the Court of Appeal dated 25 July 2005. Although no trial hearings were conducted, several District Courts including the Dili District Court held 72 hour detention review hearings for new cases.

Oecussi District Court

On 19 August 2005, an international judge presided over two hearings at the Oecussi District Court. A decision was handed down in a murder trial, and a 72 hour detention review hearing was held for a case of attempted rape.

Murder Case

The defendant in the murder case was sentenced to 10 years imprisonment. The Public Prosecutor had charged the defendant with murder under Articles 338 and 340 of the Indonesian Penal Code. According to witness testimony, the defendant and six others had tied up the victim in his house before he was tortured and murdered. The witness also saw the defendant strike the head of the victim with a rice pestle and the victim's throat was cut by one of the others. The victim's body was located after a witness reported it to INTERFET.

The defendant denied all charges, however, according to the judge this contradicted the statement given by the defendant at the time of the initial detention review hearing. In a statement given in the previous hearing, the defendant denied being involved, however he saw the person who killed the victim but did not mention his name. The court finally decided that it had been established that the defendant was involved in the murder and sentenced him to 10 years imprisonment on the basis that the defendant participated in the assault on the victim, however, he did not commit the final act which killed the victim. The life sentence provided for under Article 340 of the Indonesian Penal Code was held to be inapplicable for the reason that it contravenes Article 32 of the Constitution.

Rape Case

On 19 August 2005, the Oecussi District Court held a 72 hour detention review hearing in a case of alleged rape of two female minors. The victims were allegedly raped by the same suspect in different locations and at different times. In the review hearing, the suspect denied the charges and stated that he had consensual sexual intercourse with one person. Victim X stated that before she was raped the suspect had invited her to his house to give her something. Upon arrival at the house X was dragged by the suspect into a room and her clothes were removed and she was thrown on the floor before the suspect had sex with her. The suspect threatened to kill X if she screamed or told anyone about the incident. X told her older sibling about the incident because she was in pain and bleeding profusely from her genitals. X was taken to hospital and remained there for one week.

During the aforementioned hearing, the defendant stated that he intended to marry the victim and he requested the court to settle the case using traditional means. However, X hoped for the defendant to be imprisoned and did not want the case to be settled using traditional means. The other alleged victim Y stated that the suspect had raped her after she was taken to his house and was detained in a locked room for two days and two nights, while the defendant attended school. The suspect denied that he had detained the victim or had sexual intercourse with her.

After hearing the testimony from X, Y and the suspect, the judge decided that this was a serious case justifying detention of the suspect for 6 months. She indicated that a further review would be conducted in 30 days time.

Given the risk that the suspect might abscond, remove evidence or threaten victims, the decision of the court to temporarily detain the suspect was, in JSMP's view, sensible and will facilitate the proper investigation of this case. It was also clearly appropriate for the Court to refuse settlement of this case by mediation as was proposed by the defence. Rape is a serious criminal offence which must be prosecuted by the judicial authorities. It should not be the subject of a negotiated resolution between the perpetrator and the victim, or their respective families.

Progress of Court Rehabilitation

There have been gradual improvements at the Oecussi District Court and the office facilities are now of a reasonable standard. In the past JSMP has observed that there was nowhere to store case files and only a limited number of chairs were available. These shortcomings were finally given serious consideration by international donors such as USAid who recently provided material aid in the form of computers, tables, chairs and a place for storing files, as well as installing air conditioners in each room of the Oecussi court.

Acknowledgement of the need for basic facilities and equipment to enable the courts to function is a positive development and JSMP is confident that these improvements will facilitate the work of the court in providing more effective and efficient services to the community. JSMP encourages the provision of a similar level of support to other courts, which also suffer from equipment shortages.