



JUSTICE UPDATE

Period: 29 – 30 March and 16 – 20 May

Issue: 13/2005

Proceedings in the District Courts

1. SUAI DISTRICT COURT

The following hearings were scheduled to be held on 29-30 March 2005 at the Suai District Court.

- Case No. 23/3/2004 (Sexual Assault)
- Case No. 123/XI/PD-Suai 2004 (Rape)
- Case No. 01/Pen/I/2004/PD-Suai (Murder)

In addition to these three hearings, the court also conducted two pre-trial hearings (on the legality of arrest) in a maltreatment case and a domestic violence case.

1.1 Sexual Assault Case

On 29 March the court heard evidence in a sexual assault case (sexual abuse) involving a victim who is a female minor aged three and a half years (the incident occurred when the victim was aged two and a half years). JSMP received information that the defendant was held in detention in Dili and then conditionally released as the time limit for detention had expired. The defendant was not present in court although he had apparently been informed about the hearing date.

The defence counsel objected to the trial continuing in the absence of the defendant. However, the judge considered it important to hear the testimony of the witnesses who were present.

The hearing was closed to the public. The prosecution presented two witnesses to the court to provide testimony. After the examination of witnesses the judge adjourned the hearing and set a date for hearing the testimony of the defendant. The trial may continue in the Dili District Court.

- Order of Arrest/Detention for the Defendant

The court ordered the absent defendant to be detained as he had not met the requirements of his conditional release. JSMP concurs with this decision but doubts if notice of the date of the hearing was conveyed properly to the defendant, as it was reported that the police did not know the whereabouts of the defendant. A PNTL officer told JSMP that the letter of notification about the hearing was still with the police, so it seems unlikely that the defendant was aware of the hearing date.

JSMP wishes to remind the court and the PNTL that everyone charged with a criminal offence has the right to be tried in their presence so that they can hear and challenge the prosecution case and present a defence (Article 14(3)(d) of the ICCPR). The right to be present at trial

imposes duties on the authorities to notify the accused in sufficient time of the date and location of the proceedings. This basic requirement of a fair trial and due process is set out in Section 2 of UNTAET Regulation 2000/30 as amended by 2001/25.

1.2 Rape Case

On 29 March the court conducted a trial in a rape case involving a suspect aged 45 years and a victim aged 12. The hearing was closed to the public. The indictment charged the defendant with alleged crimes under Article 285 and Article 287 of the Indonesian Penal Code. The defendant pleaded guilty to the crime of rape and was convicted by the court of rape under Article 285 and sentenced to three years six months imprisonment.

JSMP commends the court for explaining to the defendant his rights (such as the right to remain silent and the right to legal representation). This is a positive development in ensuring that the defendant is able to understand the trial process, especially his rights as guaranteed in the provisions of the criminal procedure code (UNTAET Regulation 2000/30 and amended by 2001/25) and moreover to guarantee a fair trial.

- Guilty Pleas

During the trial the defendant admitted to the actions charged in the indictment. The defendant told the court that he was drunk and hugged and got on top of the victim when he was staying in the victim's house. JSMP is concerned that none of the court actors made any attempt to explain to the defendant the consequences of a guilty plea as they are required to do pursuant to Article 29A of UNTAET Regulation 2000/30 as amended by 2001/25.

The defendant also told the court that he had been maltreated (the victim's mother had beaten him) following the offence. It is not clear if the court can order for an investigation to be conducted into the beating of the defendant in relation to this case.

1.3 Murder Case

The court also sentenced the defendant in a murder case to seven years imprisonment. The prosecutor had requested the maximum sentence under Article 338 (15 years) but the court took into account the defendant's admission of guilt and the fact that the family of the accused and the victim had apparently reached some sort of agreement.

1.4 Hearings held in other cases

The court also held two pre-trial detention hearings, one in a maltreatment case which allegedly resulted in serious injury to the victim and a one in a domestic violence case. In the first case the court decided that the suspect must report to the Ainaro District Police.

The pre-trial hearing in the domestic violence case involved a housewife as the suspect and her husband as the victim. The court decided that the suspect must regularly report to the police. The court only examined the suspect and did not examine any witnesses. The victim and young child of the couple were also present during the hearing. Apart from making a decision on the status of the suspect, the court also administered some advice on the meaning of a domestic relationship. After the hearing it was clear that the victim was dissatisfied with the decision of the judge and the court actors attempted to explain the purpose of this hearing to him.

2. DILI DISTRICT COURT - TWO ACCUSED ACQUITTED OF CHARGE OF RAPE

JSMP welcomes the 18 May decision of Judge Emiliano Nosolini in Case No. 24/2003 to acquit two men accused of rape under Article 285 of the Indonesian Penal Code.

The case concerned the alleged rape of a woman by the two accused in Dili in January 2003. The judge found that both of the accused had had consensual sexual relations with the victim. As the victim had consented to have sex with both of the accused, and there had been no force or threat of force, the offence of rape under Article 285 was not proved.

JSMP does not understand how the suspects could have ever been arrested and had their case brought to trial. The victim never actually reported an offence to the police. After having sex with both of the accused she had complained of a sore stomach, so the accused took her to the hospital to see a doctor. The doctor said she had a vaginal infection (apparently caused by a previously contracted STD).

Later that evening, for reasons that are unclear, a PNTL officer appeared at the house of one of the accused and told him he was arresting him for allegedly raping the victim.

One of the accused was kept in pre-trial detention until 29 July 2003 and the other accused remained in pre-trial detention until 10 May 2005.

The trial was postponed thirteen times from 2003 to 16 May 2005, apparently because the victim lives in West Timor and her transport to Dili could not be arranged by the police or the court.

JSMP believes that this case highlights a number of issues of concern:

- According to evidence given by one of the accused during the trial on 16 May, the PNTL officer who made the arrest had fought with one of the accused previously, and apparently held a grudge against him. JSMP is concerned that in this case the PNTL appears to have arrested someone because of a personal vendetta, rather than the complaint of the alleged victim.
- Despite the lack of evidence of any crime having been committed, the investigating judge decided to proceed to trial, and put both of the accused in pre-trial detention.
- The original judge postponed the trial thirteen times, and did not appear to give adequate consideration to the facts of the case in the detention review hearings (which would surely have compelled the judge to grant conditional release until the trial was ready to commence).

As a result of these apparent failings at three stages in the formal justice system, two people were deprived of their liberty for two years and six months and six months respectively, when there was virtually no evidence that either of them had actually committed a crime.

JSMP is also concerned that the court's valuable time was needlessly wasted with the conduct of such a groundless case. We are aware that a large number of violent crimes have in the past been reported to the police but, despite the availability of far stronger evidence, have never proceeded to trial.

JSMP congratulates Judge Emiliano for correcting the injustice perpetrated against the accused and deciding the case in a timely manner.

3. PUBLIC NOTIFICATION OF COURT SCHEDULES

JSMP commends Judge Emiliano for placing a notice with a schedule of his hearings for the month of May on the notice board in the Dili District Court. We also commend Judge Elias Arantes for placing a notice with a schedule of his hearings for the month of May on the notice board in the Baucau District Court. We also continue to welcome the information which Judge Sandra has made publicly available regarding the schedule of her hearings in Oecussi and Suai. However, we continue to call on the administration section of the district courts to make publicly available a schedule of all hearings of the courts, so that the public does not have to continuously cross check which judge has a hearing and when.¹

4. BAUCAU DISTRICT COURT NOW ONLY FUNCTIONING TWO DAYS A MONTH

JSMP is concerned that Baucau District Court is now only functioning two days per month. As noted in Justice Update 4/2005, with the arrival of the international judges in September 2004, it was planned that two of the judges, Judge Joana Vaz and Judge Elias Abrantes, would work at Baucau District court on Wednesdays and Thursdays in alternate weeks. Unfortunately Judge Joana had to leave Timor Leste in April 2005 for health reasons. JSMP assumed that the President of the Court of Appeal would assign one of the other international judges to work in her place at Baucau District Court, given the increasingly large backlog of cases at the court. This has not happened however, and as a result the court is only operating every second Wednesday when Judge Elias visits Baucau (Judge Elias is not able to work in Baucau on Thursdays because of his teaching commitments at the Judicial Training Centre, although JSMP notes that the JTC is currently on a one month holiday).

The lack of a consistently functioning court has particularly serious implications for the ability of the police in Baucau, Viqueque and Lospalos to comply with the 72 hour limit (set in UNTAET Regulation 2000/30 as amended by 2001/25) within which they must bring arrested suspects before an investigating judge. Police must now bring suspects to Dili or release them, in order not to exceed the 72 hour time limit. This places strains on already limited police resources in the districts.

JSMP calls on the President of the Court of Appeal to assign one of the international judges to work at the Baucau District Court every second week to ensure that 72 hour detention hearings can be held and that the significant backlog of cases at the court is worked through expeditiously.

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¹ See Justice Update 6/2005 for more on this issue.