



## **JUSTICE UPDATE**

*Period: 15 –19 November*

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### **DILI DISTRICT COURT DELIVERS TWO DECISIONS ON CASES OF DOMESTIC VIOLENCE**

On 5 and 10 November Judge Rui Pereira handed down decisions in cases of domestic violence. One case involved the murder of a wife by her husband and the other involved the repeated rape over a five year period of a teenage girl by her adult half brother. The accused were sentenced to ten and seven years imprisonment respectively. JSMP welcomes the decisions and hopes that the length of the prison terms will have a deterrent effect on potential perpetrators of domestic violence.

On 10 November Judge Sandra Silvestre conditionally released two accused who had been in pre-trial detention since April 2002. The decision was made in the absence of a Prosecutor although the Prosecutors office was informed more than once that the trial was about to commence. JSMP welcomes the decision to conditionally release the accused as the right to be tried without undue delay is a fundamental right of every accused, and especially those within pre-trial detention.

On 11 November the Dili District Court approved the adoption of a East Timorese child by a non-Timorese citizen. This was the first decision in a civil case for more than one year.

### **CRIMINAL CASE NO: 06/CO/2003**

On 5 November the Dili District Court released a decision in a domestic violence case. This is the first domestic violence decision to be handed down since JSMP commenced monitoring in the Dili District Court. Judge Rui Pereira found the accused guilty of the crime of murder under both Article 340 and 338. The accused was sentenced to ten years in prison.

From testimony in the trial it was found that in April 2002 at 10am, the accused saw a man come out of his house. When he asked his wife who the man was she did not answer him, and this had made him angry and they had started to argue with each other. His wife had run out onto the street, and he hit her with an electricity cord. They had both run into their kiosk, and had both picked up knives. He had thrust his knife three times at his wife's stomach until she fell to the ground. The accused admitted to these facts, and the stabbing had also been observed by a witness.

The judge thought all the elements of the crime of murder under Articles 338 and 340 had been proved. The decision referred to the cause of death as described in the autopsy report.

The medical documents, and photographs of the dead body all corresponded with the facts as presented in the accused's and witnesses testimony. The judge found that the accused did not plan to kill his wife. He always had the knife in his shop, and he had stabbed her in anger.

In sentencing the accused to ten years imprisonment, the judge considered the public interest, and the Convention on the Elimination of all forms of Discrimination Against Women.

#### **CRIMINAL CASE NO.28/CO/2001**

On 10 November the Dili District Court released another decision in a domestic violence case. Judge Rui Pereira found the accused guilty of statutory rape (of a girl under the age of 15) under Article 287 of the Indonesian Penal Code. The accused was sentenced to seven years imprisonment.

The accused (aged 45) had had sexual relations with his half sister (now aged 17) from 1995 (when she was aged 12) until 2001, when she had become pregnant with his child. The victim had been living with the accused's family since the death of her father in 1995. The victim alleged that, on the date of the first rape (when she was 12) the accused had taken her into the coffee plantation and threatened her with a machete and forced her to have sexual intercourse with him. After that he had continuously forced her to have sex with him, and had threatened to hurt her if she told anyone about what he was doing to her. This had continued until 2001 when she became pregnant with his child. Attempts had been made to resolve the problem through traditional justice but the victim had not accepted the result so had taken her case to the formal justice system.

JSMP welcomes the Dili District Court's first two decisions in domestic violence cases (as far as JSMP is aware these are the first domestic violence case decisions since 2001). The length of the sentences (ten and seven years) should have a deterrent effect and send a clear message out to the public that domestic violence is a crime, and that serious cases of domestic violence will receive punitive prison terms. JSMP hopes that the other trials involving cases of domestic violence will be decided soon.

#### **CRIMINAL CASE NO. 80/2002**

On 10 November Judge Sandra Silvestre delivered a decision on the continuation of the pre-trial detention in case no. 80/2002. The accused were charged with murder under Article 338 and 340 of the Indonesian Penal Code. The judge's decision was delivered in the absence of a Prosecutor

The trial in the matter was scheduled to commence at 09.30, but the Prosecutor did not appear in the court. The judge contacted the Prosecutor's office, but the Prosecutor said she could not because she was going overseas that day. The Judge asked the Prosecutor's office to send another Prosecutor in her place, or at least the documents that the Prosecutor had prepared for the case. At 10.00 another Prosecutor was in the court's vicinity, so the Judge asked him to appear instead. He said he could not, so she again asked the Prosecutor's office to send another Prosecutor. At 10.30 a Prosecutor still had not appeared, and the Judge decided to commence the trial without a Prosecutor, as the Prosecution had not provided any justification for not appearing in court, although they were fully aware that this was the date scheduled for the trial to commence.

The judge then gave the Defence the opportunity to request conditional liberty for the accused.

In her decision, the judge said that the accused had already been in pre-trial detention for two years and six months (since 10 April 2002). During that time there had not been any court hearings because the previous judge in charge of the case had postponed it continuously for various reasons. Although the accused are alleged to have committed serious crimes, according to Section 34.1 of the RDTL Constitution “anyone charged with an offence is presumed innocent until convicted.” Judge Silvestre stated that it would therefore be contrary to the law and contrary to the principles of the constitution to keep the accused in pre-trial detention indefinitely merely because the trial has been constantly postponed. The judge decided to conditionally release the accused until the end of the trial. The next trial date is scheduled for 15 December.

The right to be tried without undue delay is a fundamental right of every accused, and especially those within pre-trial detention. JSMP therefore welcomes the judge’s consideration of the rights of the accused in not extending their pre-trial detention indefinitely.

It is disappointing that the Prosecutor’s office was not able to inform the court prior to the commencement of the trial that the Prosecutor assigned to the case could not attend the trial, and furthermore was unable to send a replacement Prosecutor. JSMP is aware of other trials in which the Judge has decided to proceed without the presence of a Prosecutor because the Prosecutor’s office has not provided any reason for the non-appearance of a Prosecutor. Although JSMP is concerned about the abuse of process which may occur in the absence of one of the court actors in a trial proceeding, in numerous reports JSMP has identified the absence of one or more of the court actors as a major cause of delay. JSMP would therefore encourage all court actors to appear promptly on the date and time their trials are scheduled to commence, in order to avoid delay.

#### **CIVIL CASE NO. 9/2004**

On 11 November the Dili District Court handed down its first decision on the adoption of a East Timorese child by a non-Timorese citizen. The judge approved the adoption because the child’s biological parents had agreed to give the child to the applicant. The child had already been living with the applicant for five months. The applicant wished to give the child a better future because the biological parents could not care properly for the child.

The decision is notable because as far as JSMP is aware it is the first decision in a civil case for more than one year. The decision is also notable because JSMP was informed that the case only commenced on 8 November and it is very unusual for cases in Dili District Court to be resolved within four days.

JSMP does not know which Indonesian Law the court applied because we have been unable to obtain a copy of the decision. The civil registry and court administration both said they do not have a copy of the decision.

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

The written judgments in the case of **Anton Lelan Sufa and Others** were handed down by the court on 16 November 2005. The decisions, which accepted the guilty pleas of the defendants, confirmed the reasoning provided by the court in the oral decision. One fact of interest in the sentencing of the defendants was that the court allowed the defendants one month before commencing their sentence. According to Regulation 2000/30 as amended by 2001/25 section 42.6: “Where the penalty established is a term of imprisonment, the convict shall be imprisoned immediately, unless otherwise ordered.” It is on the basis of this provision that the court ordered the sentence to commence one month after the oral judgment. In the judgment it is stated that this decision was made on the basis of arguments on behalf of the defendants that they need time to attend to their affairs before starting their prison term. The court also indicated that they believed the risk of flight to be small on the basis of the Timorese tradition of ‘adat’ which included concepts of ‘taking responsibility and pay respect to authority’. The Prosecution has been ordered to ensure that the relevant authorities are aware of the courts decision and comply with it. In another case this week, **Mateus Lao**, the court found the defendant guilty of Crime Against Humanity murder and handed down a sentence of 8 years which is to commence on the 14<sup>th</sup> of December 2005. In this case no arguments were made by the defence council or the prosecution to delay the execution of sentence. The court has not yet released its written decision and no reasons were given for the delayed sentence. Further analysis of the Mateus Lao case will be provided by JSMP when the written decision is released.