



Justice Update

Period 1st March – 7th March 2004

Following strategy planning and discussions, JSMP has re-structured its weekly monitoring reports. Now, regular information will be provided as an Update which will be distributed mostly amongst court actors, civil society and media.

Any comments are welcomed and should be sent to Alison@jsmp.minihub.org.

Dili District Court

There were 7 civil cases and 5 criminal cases scheduled before the Dili District Court this week. All but four cases proceeded. Of particular interest were two civil cases.

The civil case of **Carascalao v Government of East Timor** (Land and Property) in the Dili District Court continued this week from the previous hearing on 5 February 2004. In the previous hearing, the Plaintiff who was represented by eleven lawyers, presented the statement of claim to the court. The Government is represented by two lawyers, a Public Prosecutor and Public Defender.

The hearing this week was held on 2 March 2004 and it was intended that the Defender would have an opportunity to respond to the statement of claim. However, this did not occur because Counsel for the Plaintiff raised an objection to the status of one of the Defence lawyers. According to the Counsel for the Plaintiff, one of the Defence lawyers had originally discussed and assisted the them draft the statement of claim.

The panel of judges adjourned the hearing to consider the issue. On their return the judges indicated that they were of the view that the lawyer could continue to act as there was no specific regulation which had been breached. The court did not consider whether the allegations were true.

JSMP is of the opinion that, if the allegations are true, although there may be no formal rules or law which would prohibit such conduct such conduct should not be permitted. Such conduct breaches ethical obligations owed by lawyers. A problem in East Timor, at this present time, is that ethical codes have not been adopted and there is no independent body to adjudicate on matters where lawyers may have breached their ethical obligations. This case raises the important issues of the need for a code of ethics and an independent body for the regulation of lawyers.

In **another case** the case was adjourned for the following week because the plaintiff's lawyer did not attend the hearing. The judge instructed the plaintiff to clarify whether his lawyer was withdrawing his representation and if so he should

try to find another lawyer. The judge further explained to the plaintiff that although it is not essential to be legally represented in a criminal case, the plaintiff may be at a disadvantage if he is unrepresented. JSMP commends both the manner which the judge explained the options to the plaintiff as well as the recognition that preference should be given for legal representation in trying to ensure equality between the parties.

On Friday, 5th of March, there were four cases scheduled and none of them were heard as most of the court actors were attending the National Dialogue. Out of the four cases, only one case had been formally postponed prior to Friday. JSMP fully supports the participation of court actors in this type of initiative, however JSMP believes that prior to Friday the Court should have postponed the cases so as to prevent accused, the parties and witnesses coming to Court.

The final section of this update provides comments on this Dialogue.

Special Panel for Serious Crimes

On 3-5 March 2004, the Special Panel for Serious Crimes conducted a hearing in the case against ex-Sakunar commander Lourenco Takaqui in Passabe, Oecussi. The accused is charged with crimes against humanity, including murder, torture and genocide. The hearing was conducted in the Border Patrol Unit office and hundreds of community members watched on from the fence of the office. JSMP commends the Special Panel on taking the initiative to conduct a crime scene visit, however there were some areas of concern. These included the accused not being present at the crime scene visit, as well as the accused remaining handcuffed during the first day of the hearing. One encouraging aspect of the hearing was the people of Passabe's positive reaction to the presence of the international judges and lawyers. Villagers felt informed of the situation and were pleased that this international process was taking place. The case will continue in Dili in coming weeks.

Court of Appeal

The Court of Appeal has started the year of 2004 with 56 cases still pending. Out of the 142 appeals filed between 2001 and March 2004, the Court of Appeal has taken a decision on 86 of these applications.

This year the Court of Appeal had a slow start, hearing an average of 3 cases per month for the first three months of 2004. In accordance with the Court of Appeal schedule, three hearings are to take place on the 10th, 11th and 17th of March.

JSMP expects that the following months, the Court of Appeal will at least return to the speed that it had during the second semester of 2003 which was of an average of 10 hearings per month. In this way, it can be guaranteed that cases are heard expeditiously in upholding the right of appeal established by the East Timorese Constitution.

National Dialogue

On 5th, 6th and 8th March, the 3rd National Dialogue on Justice was held in Dili. The forum was attended by judges, senior government authorities, court actors and the general public. The intention of the meeting was to discuss current problems facing East Timor's judicial system and to determine measures to strengthen and improve access to justice.

JSMP supports this initiative and views it as a beneficial way to consult with individuals and organisations on the factors that they consider important for the effective functioning of the judicial system. Overall, the forum was constructive and raised significant issues.

One of the issues arising out of the Dialogue's district consultations was the plan to have a 'local authority' with competency to hear civil and minor criminal cases. The intention is that this body will apply aspects of *adat* and would aim at solving the problem of access to justice in the districts. JSMP believes that there are significant issues that need to be debated in regard to this proposal. For example, what is the specific competence of the body, who will preside over the hearings and what arrest and detention powers will the local authority have? Given that the formal establishment of a local authority system would result in a significant restructuring of justice in the districts, JSMP believes it is imperative that the proposal be further defined, its compliance with human rights standards analysed and then the proposal be debated in depth.

An issue raised by the President of the Court of Appeal, Claudio Ximenes, and the Minister of Justice, Domingos Sarmiento, was the lack of capacity of court actors, including judges, prosecutors and lawyers. In response, the importance of training and mentoring was also raised by two judges of the Dili District Court as well as by non-governmental organisations, who stated that the refusal to accept training programmes from independent organisations, such as the International Development Law Organisation and The Asia Foundation, had in reality restricted the professional development of court actors. JSMP believes that all actors in the justice sector must be fully supported and that every effort must be made to achieve coordination between the Ministry of Justice and non-governmental organisations so that judges, prosecutors and lawyers receive adequate training.

Another topic which was subject of much discussion during the dialogue was the issue of financial administration of the Courts, Public Prosecutor's Office and Public Defender's Office. Many participants, including the President of the Court of Appeal, Prosecutor-General and representative of Public Defender's Office, highlighted the current problem of their institutions being directly dependent on the financial administration of the Ministry of Justice. They complained that currently their institutions have no budget allocated to them; their daily reality is one that requires requests to the Ministry of Justice in order to have access to any money allocated to their institutions.

JSMP is aware that the decree of the Ministry of Justice (Decree Number 03/2003 - October 2003) provides that finance administration of Courts, Public Prosecutor's and Public Defender's Offices is in the hands of the National Direction for Administrative, Finance and Personnel Services of the Ministry of Justice until these institutions have the capacity to administer funds independently. However, this Decree fails to provide any specific measures on how this capacity is to be built. In order to guarantee the independence of the judiciary and the effective running of the justice system in East Timor, JSMP expects that the discussions made on this issue during the National Dialogue will result in changes and fruitful measures in the near future.