



## JUSTICE UPDATE

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### Dili District Court

Australian researcher and journalist **Julian King-McKinlay**, accused of subversion and illegal possession of ammunition, was conditionally released on 12 May 2004. He is currently awaiting trial before the Dili District Court. The accused was initially detained for questioning due to a breach of his visa conditions but after a raid on his house the charges were increased to subversion, which carries a maximum sentence of 7 years imprisonment under the Indonesian Penal Code.

JSMP is concerned about potential political interference in this case. Rogerio Tiago Lobato, the Minister for the Interior has stated "His passport has been confiscated and he will be expelled from Timor. We don't want him here." In a press-conference about the issue on 14 May, the Foreign Minister, Jose Ramos Horta undertook a personal attack on the defendant, and in reality made comments on incidents that were not directly related to the facts of the case. This effectively amounted to character assassination. Further the Chief of Police, at the same press conference, Paulo Martins, showed pictures of the seized evidence. The Prime Minister Mari Alkatiri has also made several public statements against the accused, such as statements "he is abusing our tolerance, he is not a journalist and he has his own agenda to subvert state institutions". Alkatiri also accused King-McKinlay of taking part in torching his home during the December 2002 riots. Following these comments, King-McKinlay filed a defamation suit against Mari Alkatiri with the Dili District Court on 17 May 2004.

JSMP considers that these types of allegations are inappropriate and can result pressure being placed on Judges by senior government officials. Such action clearly breaches the principle of the separation of powers and threatens the court's independence. Given the multitude of negative comments made about King-McKinlay it is admirable that investigative judge Dr. Sergio Dias Quintas objectively applied the law, was not swayed by public statements and decided to conditionally release the suspect.

The 72 hour hearing occurred on 11 May with a decision issued the following day. The investigative judge held that the evidence obtained by the police was inadmissible because the search warrant stated the search must occur during the afternoon, however it occurred at night. Further, defence witnesses who owned the house claimed that the evidence obtained belonged to them and not the defendant. Julian King-McKinlay was released on the condition he reported to police twice a week, or until such time as he is deported.

The prosecutor has appealed the decision by the investigative judge and the Court of Appeal is due to hear the case on 4 June 2004. Further, King-McKinlay's lawyer has also filed an appeal in order to have his passport released and to obtain a visa. This hearing is scheduled for 7 June 2004 before the Court of Appeal.

### Special Panel for Serious Crimes

#### Decision Beni Ludji Case

On the 19 May 2004, Special Panel for Serious Crimes convicted Beni Ludji and Jose Gusmao for crimes against humanity – murder. The conviction of the Indonesian national ex-commander of Aitarak Militia and member of Aitarak Militia followed their admission of killing the pro-independence supporter Guido Alves Correia on 1 September 1999. Following their admission, they asked apologies to the family of the victim as well as to the residents of the Mascarenhas Neighbourhood in Dili.

The Special Panel for Serious Crimes sentenced Beni Ludji to 8 years imprisonment and for Jose Gusmao 2 years and 6 months of imprisonment. Beni Ludji is the first Indonesian national convicted by the Special Panel.

During this hearing, which was presided by Judge Gomes, JSMP observed that the Court did not translate to Tetum or Indonesia to the public in the courtroom. JSMP observed that when the hearing started there were some Timorese journalists inside the courtroom. However, most of them left during the hearing because they could not understand the decision which was being handed over by the Special Panel. Also in relation to the hearing on the decision of the case Florindo Moreira – which took place on the same day – no translation was provided for the public.

During 2003, JSMP had already identified the lack of translation to the public of decision of the Special Panel. It is the opinion of JSMP that when the Special Panel fails to translate the decision to the public, the Panel loses the opportunity to guarantee the participation of the community in the main procedure for bringing justice for crimes committed in 1999.

JSMP has previously issued a Press Release on this problem on the 19 November 2003. JSMP is disappointed with this conduct of Special Panel. JSMP had the impression that this problem had been solved in the end of 2003 when the Special Panel started to provide open court translation when decision were being given.

Once more, JSMP recommends that the Special Panel should translate the decisions during a public hearing to one of the languages understood by the majority of Timorese people.

#### **Decision on the Case of Florindo Moreira**

On the charge from the Prosecutor Office for Serious Crimes which accused Florindo Moreira for crimes against humanity, alleging that the accused participated in the murder of Martinho Vidal and Mantus de Araujo as well as on the torture of these people during 1999, the Panel decided that the accused was not guilty.

This decision followed the refusal to accept the request of the Public Prosecutor to drop the charges against the accused.

In terms of section X UNTAET Regulation it is needed the authorisation of the Court to withdrawal an indictment. JSMP has knowledge that once an indictment has been withdrawn, there is still room for making another indictment for a same case when new evidence is found.

In this specific case, the Court did not agree with the request of the prosecution and instead decided that the accused should be considered not guilty, based on the legal principle of that a person cannot be accused twice for the same crime to which a person has already received an acquittal. JSMP is of the opinion that the Court's position in this case provided certainty by not leaving room for further accusation against the accused on these same crimes.

#### **Indictment of Sisto Barros, Cesar Mendonza and Josep Nahak Case**

On 18 May 2004, the Special Panel for Serious Crimes conducted the Preliminary Hearing in the case of the ex militia members of Sakunar Laksaur Sisto Barros, Cesar Mendonza and Josep Nahak.

The prosecution indicted the three accused for their alleged involvement on crimes against humanity during the violence which took place in East Timor in 1999 in Suai District, which included the murder of Fredico Barros,

Nazario Gutteres, Lourenço Gusmao, and the attempted murder of Armando, Fenencio and Edmundo Soares Pereira.

The defence presented a motion to the Court requesting a psychiatric examination of one of the accused. The Court accepted this motion and decided that they would look for psychiatry in order to do undertake this examination.

Following this motion, the Prosecutor requested the split of the charges in order to continue the trial for the other two accused who did not need to undertake medical examination. During this hearing, the Court was of the opinion that there was no need to decide on this request as first the Court should look for psychiatry to them to analyse whether the medical examination would indeed delay the process so as to consider the motion from the prosecution.

During this hearing, the defence also requested the Court to close the hearing and the documents related to the issue of psychiatric examination arguing that this issue had a direct impact on the accused's right to privacy. The Judge was of the opinion that in this case the public interest is stronger than the privacy of the accused and consequently denied this defence motion and maintained the public character of the trial.

The psychiatric examination has the objective to establish whether the accused can have criminal responsibility or not. In any case, it is then important to first determine the mental status of the accused in order to proceed with the trial. JSMP is aware that in a case related to an accused who could lack the necessary mental standing to be criminally charged there is the need to the Court to provide the accused with a special treatment, in a similar manner as when dealing with juveniles. JSMP is aware that the current conditions in East Timor might bring challenges when trying to identify suitable experienced psychiatrics to assist the Court in this case. JSMP is aware that this is an interesting case as, depending on the result of the psychiatric exam, it could be an example as to how the judicial system treats a person suspect of having committed crimes against humanity and who lacks the mental standing to be criminally responsible. JSMP will continue to closely monitor this case.

## **Court of Appeal**

Since last week of April 2004, the Court of Appeal has now a system for simultaneous translation during its hearings. This equipment has been provided by the United Nations Development Programme Project "Justice System Programme".

During the year 2003, JSMP Report on the Dili District Court had already identified the problem of the Court of Appeal in relation to the language usage. JSMP is aware that the Court of Appeal has no common language between its Judges. JSMP is happy with the provision of simultaneous translation as it will assist in overcoming the problem of language during the hearings.

JSMP is also aware that the Special Panel for Serious Crimes has a big problem in relation to languages. Often hearings take a great amount of time because of the need to translate the proceedings. For JSMP's knowledge in 2003 the Special Panel had plans to establish a simultaneous translation system. To date, this plan has not yet concretised even with a great amount of case which are delayed. Also Special Panel has to conduct the trials even faster at this period as the Special Panel as well as the Serious Crimes Unit will probably conclude their work by May 2005. JSMP is of the opinion that it is of great importance to the United Nations – UNMISSET to guarantee that the request of Special Panel is complied with by providing simultaneous translation as soon as possible.

During the week of 17 to 21 May, the Court of Appeal had two hearings scheduled. These two hearings related to appeals of the Special Panel cases. Both hearings did not take place as the President of the Court of Appeal could not attend the hearings as he was participating in the Donors Conference.

JSMP recognises the important role of donors in the justice system in East Timor. It is also important the participation of the President of the Court of Appeal in the donors meeting. However, JSMP is of the opinion that

it is always of utmost importance to guarantee that other tasks of Judges do not interfere with the work of the Judges in the Courts.