



JUSTICE UPDATE

Period: September 2005

Issue No. 18/2005

Summary of Cases before the Courts

During September JSMP monitored cases before all courts (except Oecusse District Court which conducted no hearings), including the Court of Appeal. A 72 hour review hearing was also held during this period, however, JSMP was unable to attend.

Significantly, the Dili District Court recommenced hearings in civil cases. This is positive progress, however, civil cases are still not being processed by the other District Courts.

These cases illustrate a number of important issues which continue to affect the development of law enforcement and the court system in Timor Leste. For example, JSMP has observed that on many occasions during hearings suspects and witnesses experience difficulties understanding questions put forward by court actors. Furthermore, cases being heard in the Dili and Baucau District Courts were disrupted by electricity black outs which prevented court actors from recording court transcripts or printing out decisions. For this reason hearings had to be adjourned until the electricity returned.

The following is a brief summary of the more prominent cases heard in all courts during the month of September.

A. Court of Appeal

- Sale of Harmful Liquor (Pros No 10/INTER/05/TR)

The Court of Appeal upheld the decision of the Dili District Court dated 11 August 2005 ordering detention of a suspect accused of knowingly selling harmful liquor. The judge deemed that there was a risk that the suspect would continue to sell the aguarente liquor if released and ordered his continued detention on that basis. Agurente is a form of alcohol which contains ethanol and has caused the death of several individuals. The suspect has been charged with sale of harmful goods with knowledge under Article 204 of the Indonesian Penal Code.

B. Dili District Court.

Civil Cases

During the second and third weeks of September 2005 hearings in civil cases recommenced. Hearings in 3 cases were held, namely a request to adopt a child that was made by a foreigner, a divorce case and a property dispute over a building. The adoption case only progressed to the first stage. The divorce case could not be continued as the parties had reached an amicable solution. The property dispute only reached the first stage and the judge decided to continue the case on the 27 October 2005.

Criminal Cases

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- **Habeas Corpus¹**

On 8 September 2005 the Dili District Court heard a habeas corpus application in relation to a case of sexual assault that occurred in Aitarak Laran in October 2004. Article 33 of the RDTL Constitution and UNTAET Regulation 30/2000 (as amended) both guarantee that every citizen arrested and illegally detained, or detained in excess of the maximum time limit, has the right to be brought before a competent court to apply for their release by way of the habeas corpus procedure. The maximum detention period is 6 months, unless the case is particularly serious or complex and there are compelling grounds justifying detention in excess of that period. In this case, however, the suspect was detained for 10 months without any further review of his detention. His application for release was therefore granted.

- **Police Maltreatment**

An international judge handed down an eight month suspended sentence, punishable by a term of five months imprisonment if the defendant violated the good-behaviour conditions imposed by the Court. The public prosecutor charged the defendant, who is a member of the police force, with maltreatment under Article 351 of the Indonesian Penal Code. The judge's decision was based on evidence that the victim was carrying a knife which was visible to the defendant; the defendant approached and seized the knife; the defendant hit and kicked the victim and seized the knife; the victim was taken to hospital for treatment; the defendant was not wearing his uniform at the time; the defendant made a confession.

- **Fraud-related Offences**

On 16 September a hearing was held in which the indictment was read out and the defendant and victim were questioned. The suspect was accused of committing theft and falsifying documents on behalf of a particular organization in violation of Articles 374 and 264, which carry sentences of 4 years and 8 years respectively. The hearing was adjourned to 4 October.

C. BAUCAU DISTRICT COURT

On 21 September 2005 JSMP observed four hearings at the Baucau District Court which concerned criminal matters. Each of the four hearings, which were attended by both international and national court actors, had reached the trial stage.

- **Theft and Damage**

This hearing concerned the reading out of the indictment to the defendants. The Defendants were charged with theft and damage under the Indonesian Penal Code. The incident was committed on 24 October against four victims in the sub-district of Laga, District of Baucau. At the time of commission the suspects allegedly covered their faces with masks, carried swords and ambushed the victims by throwing stones at them. The trial was adjourned to 5 October 2005.

- **Negligent Driving Causing Death (No. 20/PID.S/2005/TD.BCU)**

¹ See further *JSMP Press Release*, 'Application for Habeas Corpus Granted', 8 September 2005.

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In this case relating to a traffic accident the court sentenced the defendant to three years jail for negligent driving causing the death of an individual in violation of Article 359 of the Indonesian Penal Code. The judge based his decision on the confession of the defendant.

- **Negligent Driving Causing Death (No18/PID. S/2005/TD. BCU)**

This hearing concerned the examination of the defendant and witnesses as well as the reading out of the prosecutor's recommendation of sentence and the final statement of the defence. The defendant, who was on conditional release, was charged under Article 359 of the Indonesian Penal Code in relation to negligent driving resulting in the death of the victim. The hearing was suspended temporarily as a witness was unable to speak Tetun and only understood the dialect of *Makasae*. The hearing was adjourned until 5 October 2005.

D. SUAI DISTRICT COURT

- **Separatism**

On 5 September 2005, the Suai District Court sentenced 4 defendants who had been charged with separatism-related offences under Article 106 of the Indonesian Penal Code.² This was based on their flying a flag and declaring a new nation called *Republico Timor Tasi Mane* (South Timor) with the intention of dividing the nation of Timor Leste.

This declaration took place on 9 April 2005 in Cailaco, Manufahi. In addition the suspects sent letters to the American President and the UN and circulated a letter to several local citizens which stated that all civil servants including the PNTL must immediately depart from the nation of *Republico Timor Tasi Mane* and move to the north. The four suspects revealed that their reason for establishing the nation of Republico Timor Tasi Mane was because of social and economic problems. The judge deliberated and sentenced two of the suspects to four years imprisonment for their primary involvement in the case. The other two suspects were sentenced to two years imprisonment.

² See further *JSMP Justice Update # 14/05*, 'Oppressive Indonesian Law Applied by the Court of Appeal'.

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