



JSMP

Press Release

Wednesday, 13 April 2005

### **Dili District Court Acquits Three PNTL Officers In Rape Case**

On 13 April 2005, the Dili District Court acquitted four accused, including three PNTL officers in a rape case.

There were actually ten accused in the trial, including nine PNTL officers accused of having raped a woman in Dili in May 2004. The nine PNTL officers were accused of rape under Article 285 of the KUHP (Indonesian Penal Code) and the pimp was accused of an offence under Article 297 of the KUHP. At the 72 hour hearing on 4 June 2004 the investigating judge had decided on pre-trial detention for three of the PNTL officers and the pimp, and had conditionally released the other six PNTL staff. This decision was upheld by the Court of Appeal on 28 July 2004. The four detained accused remained in pre-trial detention until the trial commenced on 5 April 2005 (a period of ten months).

At the 72 hour hearing on 1 - 4 June 2004, there had been a total of 5 Prosecutors and 7 private/LBH (legal aid) defence lawyers. When the trial commenced on 5 April 2005 there was only one Prosecutor (who was not present at the 72 hour hearing) and there were two private/LBH (legal aid) defence lawyers, one of whom had not been present at the 72 hour hearing.

On 5 April, Judge Joana Vaz, asked the defence lawyers which defendants they were representing. The defence said they would represent the three PNTL officers who had been in detention since June 2004. Judge Vaz asked who would represent the pimp, but no lawyer volunteered his/her services.

On 5 April Judge Vaz read the indictment and then called the first accused. She asked if he accepted the allegations, and he denied he had committed the crime alleged. Judge Vaz then questioned the first accused as to his version of events on 10 May 2004. At the end of the first accused's testimony Judge Vaz adjourned the trial to 13 April.

On 13 April there were two new defence lawyers present and a new prosecutor (that is different from those who had been present on 5 April 2005 and 4 June 2004). After repeatedly trying to telephone the defence lawyers of 5 April, the two new defence lawyers requested Judge Vaz to postpone the hearing until the defence lawyers of 5 April were available. The new lawyers also pointed out Article 6.2 (a) of Regulation 30/2000 as amended by Regulation 25/2001:

At every stage of the proceedings, the suspect and the accused shall be informed by the public prosecutor that he or she has the right to be assisted by and to communicate freely and without supervision with a legal representative of his or her own choosing and to have such legal representation provided to him or her without cost where the suspect does not have sufficient means to pay for it.

The two new defence lawyers then walked out of the court room.

The judge accepted the refusal of the two new defence lawyers to appear in the absence of their colleagues, and immediately appointed a Portuguese person who was sitting in the visitors section of the court to represent the four accused. The judge then suspended the trial for ten minutes to allow this person to speak with his clients.

When the trial recommenced the judge asked the prosecutor to read the final allegation. The prosecutor replied that he had never been involved in the case before in that case and that before he read the final allegation, it would be necessary for the court to hear the testimony of the accused, the victim, and the witnesses. The new Portuguese defence lawyer(?) argued that there was no need to continue the case because there was no indictment.

Judge Vaz then decided to free the accused because of lack of evidence and because the four accused had been in long-term pre-trial detention. She did not provide any legal basis for her decision. She did comment however, that the East Timorese court actors were unprofessional and lacked ethics.

It seems that the Judge has given her final (oral) decision in this case that the accused are not guilty.

JSMP observed the following major procedural irregularities with this case:

- On neither trial date was the victim present. The court clerks gave the police two notifications to attend trial. It is not clear whether the notifications ever reached the victim. JSMP notes that following the 72 hour hearing on 4 June 2004, the victim was taken to a shelter house in hiding, as there were threats made against her at that hearing.
- It appears that the Prosecution was not given the opportunity to present evidence, in accordance with Section 33 of UNTAET Regulation 30/2000 as amended by 25/2001. We note that only one accused was asked to give his testimony during the two days of trial hearing.

JSMP is also puzzled as to why the Judge did not also call forward the other six PNTL officers (who had been on conditional release since 4 June 2004) as defendants in this case. It is not clear whether the case against these six PNTL officers will continue or not.

JSMP is also not certain whether the Judge consulted the case file before making her decision to acquit the accused. We note that a substantial amount of evidence was presented at the 72 hour hearing on 1-4 June 2004 (including testimony from all ten accused and the victim and witnesses) which the Judge could have referred to when making her decision.

In our view, the case highlights a number of problems with the current functioning of the district courts:

- There are now no public defenders available to represent accused free of charge because they are all in full time training at the Judicial Training Centre.<sup>1</sup>

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<sup>1</sup> This situation will continue until the Commission of Evaluation for Public Defenders announces its decision as to the results of the evaluations. The evaluations were carried out in 2004. No explanation has been provided by the Commission as to why it is taking so long for them to make their decision.

- There are now only five public prosecutors available to cope with a backlog of over 3000 cases from the prosecution. The other public prosecutors are all in full time training at the Judicial Training Centre.<sup>2</sup> (The five public prosecutors who are currently working failed the preparatory stage of the Judicial Training Centre training.) As a result, many cases which the prosecutors in training commenced in 2004, have now been taken over by new prosecutors who are not familiar with the background to the cases. This of course affects their capacity to properly prosecute the cases.
- There is also currently no law in place to regulate who can work as a private lawyer. It is unclear whether the Judge can just appoint anybody sitting in the visitors area of the court to defend the accused as happened in this case, or if those who work as private lawyers must be registered with the Bar Association.

Overall JSMP is very disappointed with the outcome of this case. Nine PNTL officers were charged with rape and in our view neither the rights of the accused to proper legal representation, nor the expectations of the victim and the community to have an independent tribunal hold a proper trial in regard to her allegations, have been respected. This decision again demonstrates that violence against women in Timor Leste is not treated seriously by the formal justice system. JSMP hopes that the prosecutor in this case will appeal this decision of the district court to the Court of Appeal.

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