

JSMP Comments to the Sergio Lobo interlocutory appeal.

Judicial System Monitoring Programme (JSMP), Dili 27/7/01

Wednesday, 25/7/01, Panel A of the Dili District Court decided to conditionally release Dr Sergio Lobo, the prominent surgeon and candidate in the forthcoming constituent assembly elections, from detention in Becora prison and place him under house detention until his forthcoming trial.

The decision to release Dr Lobo from detention was greeted with considerable surprise by several Timorese and International NGOs. It is alleged that Dr. Lobo has a long history of assaulting his wife during their 15 years of marriage. He was indicted in East Timor in February 2001 after allegations of him seriously attacking both his wife and a nun at a convent in Dare where his wife was in hiding at the time. Dr Lobo was not detained after this assault, despite both witnesses and technical evidence confirming the allegations. On 8 July 2001 Dr Lobo again allegedly attacked his wife. Dr Lobo had been detained after this recent incident but his defence counsel appealed this decision of the investigating judge.

The interlocutory appeal hearing took place at the Dili District Court on 25 July 2001. An international lawyer from the Judicial System Monitoring Programme (JSMP) was present during the entire hearing.

1. The law

The criminal procedure code currently in place in East Timor is contained in UNTAET Regulation 30/2000. Section 20.7 provides that the court may confirm the arrest and order the detention of a suspect when there are reasons to believe a crime has been committed, that there is sufficient evidence that the suspect is the perpetrator and there are reasonable grounds to believe that such detention is necessary. Section 20.8 provides that:

Reasonable grounds for detention exist when:

...

(c) there are reasons to believe that the suspect will continue to commit offences or poses a danger to public safety or security.

(d) there are reasons to believe that witnesses or victims may be pressured, manipulated or their safety endangered; or

Article 21 provides a set of substitute restrictive measures to be ordered as an alternative to detention. It states that:

As an alternative to an order for detention, the Investigating Judge may order one or more of the following substitute restrictive measures, if he or she believes it is necessary to ensure the integrity of evidence related to the alleged crime or the safety or security of the victim.....

(a) House detention.

.....

(c) a regime of periodically visits of the suspect to an agency or authority designated by the Investigating Judge

2. The decision of the Investigative Judge

The Investigative Judge decided, in a public hearing on 12 July to detain Dr. Lobo. The Judge stated the reasons being to protect the victim, as well as the risk that the accused might leave the country. The decision was appealed by the defence counsel.

3. Facts as presented in court

Both the accused and the victim were interviewed by Presiding Judge Helder. They were not questioned by either the prosecutor or the defence, even though they have the opportunity to do so according to UNTAET Regulation 30/2000 article 33.2.

In addition, the appeal was read out by the defence and included a number of points:

- That the domestic violence had started while the couple lived in Java, and that she had left him as a result of that. This gave him the full responsibility of being both a "mother and a father" - a very difficult position.
- That he has given her a number of signs that he loves her, such as a car.
- That he thought his wife was hiding in Dare, and that he thereafter saw her talking to a man in hotel Audian, something which made him lose control.
- That Dr. Lobo is working as a surgeon at the hospital, which is of vital importance to the community.
- That they are still married.
- That the first hearing should have been closed to the public, and that the right of the defendant had been violated.
- That it is part of Timorese culture that the husband controls the actions of his wife

The defence also included that the courts decision "not only should be based on law, but also on justice". In their own words, they stated that it is not just that she left him, but also that she never paid back the good things he gave her, that as a doctor he knows the symptoms of HIV, and that it is not justice that she brings such a disease back to him.

The prosecutors asked the court to look at what was relevant in this case, and not include irrelevant facts to the case. They mentioned the reasons for use of detention in Article 20.8, and stated that the previous attacks were violent, and that the victim feared that the accused would kill her.

The victim told how the accused had come to the hotel with his friends after closing time, kicked her door in and attacked her. She had tried to contact CivPol, who first arrived after the accused and his friends had destroyed both computer equipment and inventory at the hotel. She needed medical assistance after the incident, and the medical report was handed over to the court. During the Court's questioning of the victim, Presiding Judge Helder asked whether she had received approval from her husband for starting to work at the Hotel, as well as to move from the place she was hiding.

Dr Lobo did not dispute the claims against him in court. He stated he could provide his wife with food and clothes, and that she had no right to leave him. He claimed it was his right to control the actions of his wife, and accused her of being a HIV positive prostitute.

4. The decision of the court

The court decided to overrule the previous decision of the Investigative Judge. They decided to release him from detention, but ordered the substitute restrictive measures of house detention and weekly reporting to the court. The accused were allowed to travel back and forth to work at the Dili Hospital.

The court based their decision on the following grounds:

- A) Dr. Lobo's work at the Dili Hospital;
- B) The children's right to be with their father;
- C) The cultural situation of East Timor, where a man has the right to control the actions of his wife.

5. JSMP Comments to the decision

The Judicial System Monitoring Programme acknowledges the court's discretion in deciding upon detention issues, but are concerned by several aspects of the court's decision, including the grounds given for releasing the accused from detention and instead imposing substitute restrictive measures.

The accused is currently indicted on grave criminal charges. Facts revealed in court shows that the accused has assaulted his wife during a number of years, and that, on several occasions, she has been in need of medical treatment. The victim has feared for her life, and mostly stayed in shelter during the last six months. The accused has even been arrested for allegedly physically assaulting his wife after being charged with a similar offence previously. All these facts clearly indicate the existence of a reasonable fear that he may either commit further offences or continue to threaten and intimidate his wife. In its reasoning for imposing the substitute restrictive measures, the JSMP can not see that the court has taken these facts into serious consideration. Instead of focusing on the victims safety, the decision lists three grounds to impose substitute restrictive measures. Although the measures are listed in the UNTAET Regulation 30/2000 as alternative to detention, they should not be imposed when the security of the victim is as obviously endangered as in this case. House detention, with an opportunity to travel to and from work does not ensure the same level of safety for the victim as regular detention in a prison facility.

Further, the all-male panel A of the Dili court's reference to aspects of Timorese culture, seen together with the presiding judge's questions to the victim, shows bias and a discriminatory attitude that should not prevail in a court of law. They write in their decision that a husband has the right control the actions of his wife, but fail to mention that she left him a long time ago due to his, allegedly, continuous assaults.

So called cultural standards can never justify discrimination in any way. Section 2 of UNTAET Regulation 1/1999 stipulates that the all public officials in performing their duties must observe internationally recognised human rights standards. One of the most important rights is the entitlement to a fair trial. JSMP is concerned that this interlocutory decision has the potential to seriously undermine the equally important rights of the victims of crime and violates international human rights law aimed at ensuring the safety and security of every person. Furthermore, the decision seems to reveal a prejudicial attitude, even within the justice system, against respect for women's rights in East Timor.