



## JUDICIAL SYSTEM MONITORING PROGRAMME PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

### **Case Summary**

**Period : April 2010**

**Issue : April 2010**

### **Summary of current trials before the Baucau District Court**

Between 19-23 April 2009 JSMP conducted court monitoring in the Baucau District Court. During this period a panel of judges conducted hearings in several cases. The panel comprised one international judge, Diago Ravara, and two national judges, Afonso Carmona and Edite Palmira. The prosecution unit was represented by Benvinda do Rosaria and the defendant was represented by public defender Rui Guterres. A private lawyer from the Legal Aid Organization *Edukasaun Comunidade Matebian* also appeared on behalf of defendants.

JSMP observed that prior to each hearing the judges explained the rights and obligations of the defendants as set out in Articles 60 and 61 of the Timor-Leste Criminal Procedure Code.

The cases may be summarised as follows:

#### **1) Attempted rape of a minor, Case No. 118/crm.c/2007/TDB**

The court did not conduct a hearing because the defendant, victim and witnesses did not attend court, even though summons had been issued informing the parties of the scheduled hearing. The court clerk informed the court that the parties reside in Lospalos. The court clerk said that he would issue another summons to the parties and find out why they did not appear in court. The hearing will be rescheduled for this case once the court has re-informed the parties of their obligation to appear.

#### **2) Serious Maltreatment (Domestic Violence) Case No. 195/crm.c/2009/TDB**

The defendant and victim did not make statements before the court because they are husband and wife. A witness for the prosecution said that: he heard the defendant and victim arguing; that not long after that he heard the victim crying; that he saw the victim bleeding from the mouth and with some of her teeth loose; but that he did not see the

defendant commit violence against the victim. However, he also said that the victim told him at that moment that she had suffered violence at the hands of the defendant.

The prosecution recommended that the court find the defendant guilty under Article 154 of the Timor-Leste Penal Code for committing a serious offence against a spouse in the form of domestic violence. The prosecution also mentioned a medical report from the doctor who gave medical assistance to the victim at the hospital. The defence admitted the actions of the defendant, but stated that after the incident the defendant did not commit any further maltreatment or other criminal offence against the victim. Therefore the defence asked for the court to consider the matter carefully and in the interests of justice. A decision in this matter will be announced on 27 April 2010

### **3) Attempted Rape, Case No. 115/crm.c/2009/TDB**

The presiding judge read out the indictment which charged the defendant with committing sexual assault; however the defendant denied all charges.

The victim testified that the defendant had pulled down her underpants and placed his fingers on her genitals. The defendant then kissed the victim but the victim resisted.

A second witness, the victim's husband, testified that he saw the defendant chase the victim and pull her hair. In response, the witness said that he had chased and pushed the defendant, and hit him once on the cheek.

The prosecution recommended that the defendant be found guilty under Articles 23 and 171 of the Timor-Leste Penal Code. However, the public defender asked that the defendant be acquitted because the separate testimonies given by the defendant, victim and witness were inconsistent about when this incident had occurred. A decision in this case will be announced on 4 May 2010.

### **4) Attempted Murder, Case No. 149/crm.c/2009/TDB**

The prosecution charged the defendant for stabbing the victim several times: once on her neck, three times on her side, once on her head and once on her right knee.

The defendant and the victim both used their right to remain silent because they are father and daughter. However, another witness, TC, testified that he had heard screaming from the river when the incident took place. When he approached he saw that victim lying next to the river with a wound on her knee. The witness also saw that the victim was totally covered in blood. The witness took the victim to the hospital.

Since the prosecution only produced one witness, the court adjourned the trial until 11 May 2010 to hear testimony from other witnesses.

### **5) Serious Maltreatment, Case No. 212/crm.c/2009/TDB**

The presiding judge read out the indictment, which included the following facts: on the day of the crime, the defendant was sleeping when the victim entered their bedroom and saw that many things in the room were broken and out of place; when the victim asked the defendant why he had done such a thing, the defendant answered “*shut up, or else I will break your neck!*” ; upon hearing this threat the victim left the room but the defendant pursued the victim and struck the victim on the cheek causing injury; and as a result of the defendant's actions the victim had to receive treatment at the hospital.

The defendant admitted that he had struck the victim on the cheek, purportedly because the victim did not want to go to sleep, even though it was late at night. The defendant said that both he and his family had tried to reconcile with the victim but the parents of the victim refused.

The victim gave testimony that corresponded with the charges presented by the prosecution. The victim stated that during their period of cohabitation, the defendant had committed maltreatment against the victim at least five times. Therefore, the victim refused to continue living with the defendant.

The court then stated that it was not necessary to hear testimony from another witness who was also present at the court, because the defendant and the victim had already related the particulars of this case with consistency.

The prosecution recommended that the court find the defendant guilty under Article 154 of the Timor-Leste Penal Code in relation to mistreatment of a spouse. However the public defender representing the defendant made an oral request to the court to downgrade Article 154 to Article 145 because, in his view, the elements of an Article 154 crime had not been established. In support of this argument, the public defender stated that no evidence had been presented to show that the defendant had mistreated the victim on several occasions.

A final decision in this case will be handed down on 6 May 2010.

For more information please contact:

Luis de Oliveira Sampaio  
Executive Director of JSMP  
Landline: 3323883  
Email: [luis@jsmp.minihub.org](mailto:luis@jsmp.minihub.org)