



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

Case Summary

Period : May 2011

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**Summary of hearings conducted at the Baucau District Court in early May
2011**

Between the 3rd and 6th May 2011 JSMP conducted court monitoring of hearings conducted at the Baucau District Court. For four consecutive days JSMP observed that trials were being conducted as per normal, however several hearings were delayed because of the non-attendance of defendants. Several hearings were delayed and therefore held at times that did not coincide with notifications issued by the court. Other cases were delayed because one of the judges was ill.

The Baucau District Court issues a schedule of hearings, however a problem that occurs frequently is that hearings are not held at the times set out in the agendas set by the court itself. Therefore, victims and defendants have to wait, which is what happened to those involved in a case of sexual assault which was scheduled for 3pm but only started at 6.50pm and finished at 8pm, and was then adjourned until the following day, and thereafter was further adjourned until the afternoon. The court can not be blamed 100 percent for not holding hearings at the scheduled time, because there were also a number of hearings that were quite time consuming.

Based on monitoring conducted during the four day period, JSMP observed that the Baucau District Court held hearings in seven cases, four of which concerned serious crimes and three which concerned ordinary crimes.

The aim of this case summary is to disseminate up to date information to the public about developments that took place in a number of cases that were heard during the aforementioned period.

The information below provides a summary of the cases heard by the Baucau District Court during a four day period.

1. Crime of Aggravated Property Damage, Case No. 66/CRM.C/2010/TDB

On 3 May 2011, the Baucau District Court for the second time adjourned Case No. 66/CRM.C/2010/TD.BCU relating to aggravated property damage. This second adjournment occurred because one of the judges is still sick.

This case relates to the damage and burning of the Malurukumu Primary School that took place in Makadiki Village, Uatulari Sub-District, Viqueque District on 15 September 2009. The defendant JPP was charged with violating Article 259 of the Penal Code which carries a sentence between 2 and 8 years imprisonment.

The court adjourned the case until 25 July 2011 at 2.30pm.

2. Crime of Attempted Murder, No. 169/CRM.C/2009/TD.BCU

On 4 May 2011 the Baucau District Court tried a case involving four defendants TGX, FDX, EC and JR who were accused of trying to murder the victim MGS. It is alleged that the incident occurred on 12 October 2009, at the intersection of Teulale Road/Tuelale Primary School No. 2, in Tirilolo Village, Baucau Sub-District, Baucau District.

The trial was presided over by a panel of judges comprising Angela Belo R. de Matos Faria, SH (international), Edite Palmira, SH and Ana Paula, SH. The Prosecution Service was represented by Benvinda do Rosario, SH and the defendants were represented by lawyers from the ECM Baucau Office (private lawyers), Cristovão Nuno Ximenes, SH and Águida de Fatima, SH.

The incident occurred on 12 October 2006 at approximately 8.30am when the victim and witness JSB were heading towards the cemetery in Teulale. When they reached the intersection of Teulale Road/Tuelale Primary School No. 2 the four defendants and a group of others attacked the victim who was sitting in the back of a car. The defendant JR stabbed the victim in his left thigh and the other three defendants punched and kicked him. He was struck with a *double stick* and suffered injuries and swelling to various parts of his body. For one month the victim was hospitalized in Baucau. For three months the victim was unable to perform heavy work and could only eat soft foods. Based on testimony provided by the defendants and the victim, they were involved in martial arts groups, namely the victim belongs to PSHT and the four defendants belong to *Kera Sakti*, and the two groups have been in conflict.

The prosecution charged the defendants based on the evidence revealed during the trial, such as accusations that they kicked and punched the victim who suffered injuries all over his body. The prosecution stated that the defendants had the intention of killing the victim, but the police arrived at the scene very quickly and the defendants fled and the victim was saved. Each of the defendants was charged for violating articles 53, 55 and 338 of the Indonesian Penal Code relating to murder.

The decision was scheduled to be read out read out on 19 May 2011 at 9.30am.

3. Crime of serious mistreatment of a spouse, Case No. 124/CRM.C/2010/TD.BCU

On 4 May 2011 the Baucau District Court conducted a hearing in a case of serious mistreatment of a spouse committed by the defendant RS against the victim EAC. The incident occurred on 28 February 2010 in Tahagaba-Uabobo, Ossu Sub-District, Viqueque District.

The incident occurred at approximately 8.00pm when the defendant asked the victim for US\$ 5, the price of some candlenuts. The victim answered that the money had already been used to buy rope to tether buffaloes. After hearing the victim's statement the defendant became angry and kicked the victim twice on the right side of her head and the victim fell to the ground unconscious. The witness FM, who lives a long way from the defendant and victim, found out for the first time that the victim had been subjected to violence from her husband. The victim and the witness reported the matter to the police and the victim was immediately treated by a nurse. The victim suffered swelling to her face.

The prosecution charged the defendant with Article 154 of the Timor-Leste Penal Code on mistreatment of a spouse which carries a sentence between 2 and 6 years imprisonment. The defendant's actions were categorized as a serious crime because he committed violence against his spouse, who he is supposed to protect in his capacity as head of the family.

During the hearing the victim exercised her right to remain silent and to not given testimony in accordance with Article 125 of the Criminal Procedure Code. The witness testified that he/she did not see the incident directly. The court did not identify any evidence produced during the trial and therefore the prosecution requested for the court to fully acquit the defendant.

The decision in this case was scheduled to be read out on 12 May 2011 at 2pm.

4. Crime of Rape, Case No. 24/CRM.C/2010/TD.BCU

On 4-5 May 2011 the Baucau District Court conducted a trial involving the defendant MX which was accused of raping the victim AMX. It is alleged that this case occurred in Afaca, Queliquai Sub-District, Baucau District in 2008 (date unknown). The trial was closed to the public.

Based on information obtained from the court, in 2008 (date unknown) at midnight the defendant entered the room of the victim when her husband was not home, as he was working in another location. The defendant forced the victim to have sexual intercourse. The victim was threatened and felt afraid and eventually had sexual intercourse with the defendant.

The witness Z is the victim's child and he testified that when the incident occurred the witness was surprised to hear his mother crying and he saw a man running away from the house, although it was unclear who the person was. After approximately 10 days the victim's husband returned home and the victim told him about the incident and they reported it to the police.

The defendant told the court that the sexual intercourse was consensual; however the victim told the court that she was threatened. Several times the defendant did not want to speak or answer questions from the judge which left the judge confused. The prosecution charged the defendant for violating Article 171 of the Penal Code on Sexual Aggression which carries a sentence between 2 and 8 years imprisonment.

The decision was scheduled to be read out read out on 19 May 2011 at 2.00pm.

5. Crime of Property Damage, Case No. 21/CRM.S/2011/TD.BCU

On 5 May 2011 the Baucau District Court conducted a trial in a case of property damage involving three defendants, namely JJS, SS and JFS, as well as the victim JMB. The incident occurred in Waimata Oli, Tasi Watabo, Baucau District on 11 July 2010.

The hearing was presided over by Judge Ana Paula, SH, and the Prosecution Service was represented by Jose Ximenes and the defendant was represented by Sergio Quintas, SH from the Baucau Public Defender's Office.

The incident occurred at approximately 3.00pm when the three defendants went to the victim's plantation to remove and discard fence posts surrounding the plantation. After hearing about this, the victim immediately informed the police. The defendants removed the fence posts because the victim had cut timber from another location in the area of Buruma without the knowledge of the defendant JJS who was the Buruma Village Chief.

This case was categorized as property damage and therefore the judge requested for the victim to settle the matter through mediation, however the public prosecutor and the public defender felt that it would be difficult to solve the matter through mediation because they had already tried and had been unsuccessful.

During the trial the victim asked the defendants to pay compensation for the hire of a chainsaw valued at US\$100.00, cost of timber \$ 80.00, and for paying 10 people US\$ 50.00, hiring a minibus US\$ 25.00 and food \$ 15.00. The total amount was calculated at US\$ 270.00. The victim stated that all of the aforementioned goods were damaged.

The court gave the defendants and the victim a week to agree on the issue of compensation so the matter could be closed, however if the defendants failed to pay then the matter would be pursued through the courts. The prosecution charged the defendants with Article 258.1 on property damage, as well as Article 30.2 of the Timor-Leste Penal Code on authorship, which carries a sentence up to three years imprisonment or a fine.

The court adjourned the trial until 12 May 2011 at 3.00pm.

6. Crime of Serious Maltreatment, Case No. 13/CRM.C/2010/TD.BCU

On 5 May 2011, the Baucau District Court adjourned the trial of a case involving three defendants, namely CJ, AIC and AnC, who were accused of committing Serious Maltreatment against the victim MM. It is alleged that the incident occurred in Uatukarbau, Burubahu, Uani-Uma District, Viqueque District on 3 November 2008. The trial was adjourned because the defendants ALC and ANC were not present.

The prosecutor charged the defendants under Article 146 of the Penal Code relating to serious maltreatment which carries a sentence of between 2 and 8 years imprisonment.

The Baucau District Court adjourned the trial until 2 June 2011 at 9.30am.

7. Crime of Light Maltreatment, Case No. 13/CRM.S/2009/TD.BCU

The trial of the aforementioned case was adjourned until 25 June 2011 at 2.00pm because of the non-attendance of the defendant.

The prosecutor charged the defendant with Article 145 of the Penal Code on simple offences against physical integrity which carries a sentence of three years imprisonment or a fine.

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