



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

## ***Case Summary***

Period: August 2011

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### **Case Summary for trials conducted at the Dili District Court in August 2011**

At the beginning of August 2011 JSMP continued court monitoring of criminal and civil cases at the Dili District Court. This court monitoring was carried out between the 1<sup>st</sup> and 11<sup>th</sup> of August 2011, before the court entered its judicial recess which falls each year between the 15<sup>th</sup> and 28<sup>th</sup> August 2011.

During the aforementioned two week period, JSMP managed to monitor 7 cases, comprising 4 serious criminal cases and 3 minor civil cases. From these 7 cases, 4 resulted in convictions and 3 are still ongoing.

As usual, the aim of this summary is to disseminate information to the general public about the trial process at the Dili District Court during the first two weeks of August.

The following information provides a summary of the trial process that took place during the aforementioned period:

#### **1. Murder, Case No. 217/C.Ord/2011/TDD**

On 2 August 2011 the Dili District Court read out its final decision in Case No. 217/C.Ord/2011/TDD. This case involved the 3 defendants MMG, JDMJ and JDJ who allegedly committed the crime against the victims Evaristo Soares (deceased) and Hermenegilda Maia who were a couple living in Fatu Cado Sub-Village, Railaco Kraik Village, Ermera District, on 13 January 2011.

The trial of this case was conducted by a panel of judges comprising Alvaro Freitas, João Felgar, and António Fonseca. The public prosecution service was represented by Nelson de Carvalho and the defendants were represented by Public Defender Fernando Lopes de Carvalho.

Based on the facts revealed during the trial, on the 13 January 2011 at approximately 9pm the defendants threw stones at the home of Evaristo Soares, and one of the defendants MMG struck

the victim with a piece of wood that the defendant had taken with him to the victim's house. As a result of the beating the victim experienced serious injuries to his head and shoulder. The injuries caused the death of the victim who died at the scene. The victim Hermenegilda Maia was also struck by the defendant but she did not suffer any serious injuries.

In relation to the aforementioned incident, the prosecutor charged the defendants under Articles 23 and 24 of the Timor-Leste Penal Code and in relation to the alleged crime committed against the victim Hermenegilda Maia the court did not find sufficient evidence that the defendants intended to kill her. The court was convinced that the defendants had only pushed this victim and caused her to fall over.

Based on the aforementioned facts, the court found the defendants guilty in accordance with the provisions of Articles 138 and 145 of the Timor-Leste Penal Code. The court sentenced the defendants to 12 years and 6 months imprisonment and ordered them to pay compensation.

## **2. Theft and Falsification of Signature, Case No. 133/C.Ord/2010/TDD**

On 3 August 2011 the Dili District Court conducted a hearing in a case involving the crime of theft and falsification of signature which was registered as Case No. 133/C.Ord/2010/TDD. The four defendants AdC, LdC, CA and VG were each accused of being involved in the crime of theft and falsifying the signature of the victim CG.

However, the hearing could not take place because the parties were not present. Therefore the court decided to adjourn the trial until 21 December 2011 at 9:30am.

This hearing was presided over by single judge João Ribeiro, and the public prosecution service was represented by Reinato Bere Nahak, and the defendants were represented by public defender Manuel Exposto.

## **3. Sexual abuse of minors, Case No. 215/C.Ord/2011/TDD**

On 3 August 2011 the Dili District Court continued the trial involving the sexual abuse of minors. The defendant in this case FM is currently being held in pre-trial detention. The defendant allegedly committed the acts against 2 victims AS (4) and AN (6) on 7 March 2011 in the vicinity of Metiaut, Cristo Rei Village, Dili.

The hearing was scheduled to hear testimony from the victim AN. The hearing was closed to the public.

Based on information collected by JSMP, the victim did not provide testimony during the trial. The court adjourned the trial until 12 August 2011 at 3pm.

## **4. Corruption, Case No. 364/C. Ord/2009/TDD**

On 4 August 2011 the Dili District Court conducted a hearing to read out its final decision in a case of alleged corruption registered as Case No. 364/C.Ord/2009/TDD. This case involved the

misuse of authority and corruption allegedly committed by the defendant RJB against the government of Timor-Leste. The alleged acts occurred in 2002.

The trial was presided over by a panel of judges led by João Ribeiro, who was accompanied by António Fonseca and José Gonçalves. The public prosecution service was represented by Domingos Barreto and the defendant was represented by public defender Manuel Sarmiento.

In its final decision the court found that the defendant was guilty of misusing his authority and committing corruption in 2001. The defendant rented out diesel equipment belonging to the government to others for personal gain. His actions are estimated to have cost the State US\$ 21,800.

Therefore the court was convinced that the defendant had violated the following: Article 2 of the Indonesian Anti-Corruption Law No. 31/1999 as well as Articles 372 and 374 with the aim of benefiting himself and his family and using his authority over State assets to enrich himself. All of these acts were categorized as the criminal act of fraud in accordance with the Indonesian Penal Code.

However, after examining mitigating and aggravating circumstances as well as all of the related facts, the court decided to only apply Articles 372 and 374 of the Indonesian Penal Code that carry a penalty of 4-5 years imprisonment, rather than the Indonesian Anti-Corruption Law No. 31/1999 which carries a penalty of 11 years imprisonment.

Based on the facts and legal options available, the court convicted the defendant to 3 years and six months and ordered the defendant to compensate the State of Timor-Leste to the value of US \$ 21,800.

## **5. Minor Damage, Case No. 352/C.Ord/2011/TDD**

On 8 August 2011 the Dili District Court conducted a hearing in Case No. 352/C.Ord/2011/TDD involving minor damage. This case involved the 10 defendants RC, MDC, MT, NG, MH, MA, NDC, JMB, JMM and FB. The alleged incident occurred on 21 July 2011 at approximately 9pm in Beto Timur, Comoro, Dili.

The trial was presided over by single judge José Gonçalves, and the public prosecution service was represented by Felismino Cardoso (international), and the defendant was represented by 2 public defenders, namely Cancio Xavier and José da Silva.

The prosecutor alleged in his indictment that the defendants threw stones at police car G. 02.277 in the area of Beto Timur, Comoro. As a result of their actions the window of the vehicle was smashed. The actions of the defendants violated Article of the 258 Penal Code which carries a penalty of three years imprisonment or a fine.

The defendant denied the charges of the prosecutor and stated that at the time of the incident they were not involved in any problem and suddenly at 9pm the police Task Force arrested them and placed them in detention.

The defendant FB testified that he was arrested in the middle of the street and that the prosecutor's charges were not true because at the time of the incident he had just returned from Fomento I and suddenly the police arrested him on the Beto Timor road and he was beaten, even though he said that he didn't know anything about the incident that had occurred.

Due to time constraints the court adjourned the trial until 9 August 2011 at 2:30pm to hear witness testimony.

## **6. Rape, Case No. 269/C.Ord/2011/TDD**

On 10 August 2011 the Dili District Court conducted a hearing to announce its final decision in a case of rape registered as No. 269/C.Ord/2011/TDD. This case involved aggravated rape committed by the defendant ES against the victim JR who was 15 at the time of the incident. This case allegedly occurred in Aileu District in 2010.

The hearing was presided over by a panel of judges led by Deolindo do Santos who was accompanied by Antonino Gonçalves and Guilhermino da Silva. The public prosecution service was represented by Felismino Cardoso (international) and the defendant was represented by public defender Fernando de Carvalho.

During the trial it was proven that the defendant carried out the crime of rape by taking the victim in a room and removing all of her clothing and then raping her. As a result the victim became pregnant and gave birth to twins.

The court sentenced the defendant to 15 years imprisonment, pursuant to the prosecutor's indictment citing Articles 172 and 173 (d) of the Penal Code. The defendant ES still has the opportunity to lodge an appeal with the Court of Appeal within 15 days, in accordance with the applicable rules of criminal procedure.

## **7. Domestic Violence, Case No. 205 /C.Ord / 2011/TDD**

On 11 August 2011 the Dili District Court continued the trial of Case No. 205/C.Ord/2011/TDD. This case involved the defendant LDS who allegedly committed the crime against the victim AHG in Mertutu Sub-Village, Bazartete Sub-District, Liquica District on 15 November 2010.

The trial was presided over by a panel of judges led by Rosa Brandão (international) who was accompanied by Deolindo dos Santos and António Fonseca. The public prosecution service was represented by Felismino Cardoso (international) and the defendant was represented by public defender Fernando de Carvalho.

According to the prosecutor's indictment, at the time of the incident the defendant LDS was looking for his clothes but he couldn't find them. Therefore the defendant was angry and beat the victim. At that time the victim asked the defendant to remain calm and look for his clothes but the defendant punched the victim in the face, choked her and cut her forehead so the victim felt pain and suffered a serious injury to her forehead.

Based on the aforementioned facts the public prosecutor charged the defendant under Article 154 of the Penal Code and Article 35 of the Law Against Domestic Violence.

During the trial the victim and defendant chose to remain silent and there were no witnesses in this case. Therefore the court gave an opportunity to the prosecutor to make his final recommendation.

The prosecutor stated that all of the facts depended on the statements of the victim and in the end the victim chose to remain silent. There are no witnesses in this case and no medical certificate was available, so the prosecutor requested for the court to decide the matter fairly.

The public defender requested for the court to acquit the defendant from the prosecutor's charges due to a lack of evidence in this case.

Based on the facts revealed during the trial the court decided to acquit the defendant from the crime of domestic violence charged against him.

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