



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Case Summary

Period : June 2011
Edition : 31 June 2011

**Summary of hearings conducted by the Suai District Court in
the latter part of June 2011**

During the last week of June 2011, specifically between 20-23 June 2011, JSMP continued its court monitoring at the Suai District Court. This summary only covers activities conducted in the aforementioned jurisdiction during a three day period and does not cover all trial activities that took place during the month of June, due to the limited human resources of JSMP.

During three days of monitoring at the Suai District Court, JSMP observed that hearings were not held in accordance with the predetermined schedule. For example, on the 20th and 21st June 2011, JSMP noted that in the morning the court did not hold any hearings because the defendant, victim and witnesses were late arriving to the court.

Based on information obtained by JSMP from parties and court officials, this often occurs because those residing in the districts covered by the jurisdiction of the Suai District Court¹ find it difficult to travel to the court and home again, and this is a factor that contributes to the delays experienced by the court.

In addition, victims, defendants and witnesses complained that they faced other problems such as no means of transport, or limited options to transport them from the police station to the court. Many of them had to wait a long time or spend a lot of time at the police station before arriving in court.

JSMP believes that both of these circumstances are beyond the control of the court and the police because these problems are related to the roads and the available means of transport. JSMP hopes that the rights of every individual to justice as a citizen of the State can be protected appropriately, and JSMP encourages the related ministries to

¹ The Suai District Court has jurisdiction encompassing the Districts of Bobonaro, Same-Manufahi, Ainaro and Suai.

attend to the aforementioned issues seriously and take concrete steps as soon as possible to deal with these circumstances.

In relation to the hurdles that the parties often face, the Suai District Court will conduct a mobile court in Ainaro District for one case in October this year, even though the first hearing in this trial occurred on 21 June 2011.² JSMP welcomes this initiative and the steps taken by the court, because this will bring justice closer to the people in isolated areas and at the same time it can help those who do not have sufficient money or who are unable to overcome other practical obstacles that they face on a regular basis.

Based on court monitoring conducted by JSMP during the aforementioned 3 day period, the Suai District Court held hearings in 9 criminal cases. There were 3 rape cases, 2 cases involving light maltreatment, 1 case of serious maltreatment, 1 case of minor theft, 1 case of aggravated murder and 1 case of fraud (aggravated).

Just like the case summaries provided for other courts, this summary is also aimed at disseminating information to the community about the trials conducted by the Suai District Court.

The following information provides a summary of the hearings that were conducted during a three day period in the Suai District Court:

1. Minor Theft, Case No. 98/PEN/2009/TDS

A hearing in this case was carried out on 20 June 2011 and was presided over by single Judge Ana Bella Cabral Ferreira (international), the Public Prosecution Service was represented by Zélia Trindade, and the defendant was represented by Public Defender João Henrique.

The four defendants LdS, DdJ, FdS and SdS were charged with committing an offence against the victim DdO. The alleged incident occurred on 28 December 2007 in Fatumea Village, Suai-Covalima District. The four defendants were suspected of being involved in the theft of 8 buffaloes belonging to the victim that were then sold across the border in Indonesia.

The hearing did not continue because the four defendants did not appear in court.

JSMP received information in the court room from the judge that the defendant LdS had received a written summons but had failed to appear and it was suspected that the defendant FdS had fled to Indonesia and the police needed to verify his whereabouts. After receiving confirmation that he is in fact in Indonesia, a separate trial will be held for the other defendants. The defendant DdJ refused to sign the summons before the defendant FdS has signed it. The police did not know the whereabouts of the defendant SdS or his new address. The witness AdO received a summons but failed to appear. The

² Refer to JSMP Press Release on the JSMP website dated 5 July 2011 on JSMP's position that all contains detailed information about the trial of this case.

two defendants LdS and DdJ and the witness AdO who were given a written summons have to explain their absence within five days, if not then they will have to pay a fine of \$10.

The trial was adjourned until 26 September 2011 at 2pm.

2. Aggravated Murder, Case No. 17/PEN/2011/TDS

The final decision was read out on 20 June 2011 by single judge José Maria de Araújo. The Public Prosecution Service was represented by Zélia Trindade, and the defendant was represented by Public Defender João Henrique.

The defendant MM was accused of murdering her husband AF on 27 December 2010 in Urhu, Maubisi Village, Maubisi Sub-District, Ainaru District.

On the day of the incident, the defendant, the victim and their three children were at home. The defendant took some dirty clothes and went to wash them, and the defendant asked the victim to look after the children. The victim refused to look after the children and went to sleep. The attitude of the victim enraged the defendant who went and got a pipe and struck the victim on the head numerous times while he was asleep. The victim suffered serious injury to his head and heavy bleeding. The victim was taken to hospital but could not be saved. Their three children (minors) are staying with the victim's family (family of the deceased).

The Public Prosecutor charged the defendant pursuant to Article 139 (g) of the Penal Code on Aggravated Murder because the victim was the spouse of the defendant, and this charge carries a sentence of between 12 and 25 years imprisonment. After considering the matter the court sentenced the defendant to 12 years imprisonment which was the most lenient sentence available.

The court did not order the defendant to pay court costs or compensation because of her limited financial means. However, the court continued to apply restrictive measures in the form of house arrest against the defendant for a period of 15 days until the decision is deemed to carry the full force of the law.

3. Fraud (aggravated), Case No. 11/PEN/2011/TDS

A hearing in this case was held on 21 June 2011 and was presided over by a panel of judges comprising José Maria de Araújo, Ana Bella Cabral Ferreira and Florencia Freitas. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender Marçal Mascarenhas.

The defendant RB (police intelligence officer) allegedly committed the crime against the students from classes 1-3 of the Suai High School. The alleged incident occurred in 2009 in Suai-Covalima.

In 2009 the Suai High School entered a contract with the defendant for the procurement of uniforms for students in classes 1-3, but until now the students have not received the

uniforms. The contract stated that each uniform would cost US\$ 6, but the defendant entered another agreement with the tailor Ud from Java, Indonesia at a cost of US\$ 4. Ud came to Suai District and told the school that he had an agreement with the defendant that stated that each uniform would cost \$4. The students were upset by this. Also, the defendant received \$5000 from the school and another \$1000 was to be paid after the goods were delivered.

The witness AdC testified that he did not know about the price per item or the agreement signed between the school and the defendant, and the principal of the school MT would know more about the agreement.

The Public Prosecutor charged the defendant pursuant to Article 267 of the Penal Code on aggravated fraud.

The trial will continue on 7 July 2011 at 2pm to hear testimony from the witness Ud (tailor) from Indonesia.

4. Serious Maltreatment, Case No. 24/PEN/2011/TDS

A hearing in this case was conducted on 21 June 2011 and was presided over by a panel of judges comprising Ana Bella Cabral Ferreira, José Maria de Araújo, and Florença Freitas. The Public Prosecution Service was represented by António da Silva and the defendant was represented by Public Defender Marçal Mascarenhas.

The two defendants CG and MG in this case were charged with committing an offence against the victim LA. According to the prosecutor's indictment the incident occurred on 31 August 2010 in Nainare Village, Holpilat, Maucatar Sub-District, Suai District.

In the indictment read out by the judge it was alleged that on the aforementioned date at approximately 10pm the victim wanted to go to the home of his mother. The wife of the defendant (LdJA) saw the victim passing by the front of the house and called out and asked the victim if he would like to have some betel nut. The victim entered the house so they could chew some betel nut. When the two of them were chewing on the betel nut the children of LdJA were eating some corn. After that the defendant CG who is the husband of LdJA returned from his plantation and when he arrived home he saw the door closed, and the defendant knocked on the door, but it wasn't immediately opened, then after about five minutes his wife opened the door.

When the door was opened the defendant saw the victim in his house and he was shocked and he squirted the chili he was holding in his hand towards the face of the victim and slashed the victim's hand 4 times. The defendant MG also slashed the victim's hand 4 times. The victim suffered heavy bleeding. At that time their six children were eating corn. The victim was treated at the Suai Public Hospital, but his condition did not improve, so he was transported to the Dili National Hospital. The victim received stiches on his hand and as a result was unable to work, and in addition to the medicine given by the hospital the victim also had to buy medicine for his injury.

The defendant CG in his statement rejected the charges of the prosecutor in relation to squirting chili or stabbing/injuring the victim. The defendant claimed that he did stab the victim, but he did not squirt any chili at the victim. The defendant also stated that the lights were off and all of their children were asleep. The defendant entered the house using a torch. After he came inside he went to put his cane in his room under his bed. When he went to place his cane under the bed it would not go in and he felt something hard, so the defendant shined his torch under the bed and saw the victim there. Suddenly the defendant slashed the victim's hand with his machete because the victim was holding a machete.

The victim stated that he was under the bed because the defendant has squirted him with chili that had gone in his eyes and he fell down and climbed under the bed. The witness LdJA, who is the wife of the defendant CG, stated that at that time the lights were on in the house and their children were also awake. Two other witnesses, namely MdJG and EdJG, who are the children of the defendant and the witness LdJA, used their right to remain silent during the trial.

The public prosecutor in his recommendation of sentence stated that based on the evidence presented during the trial the defendant CG had admitted that he had slashed the victim's hand, however it had not been proven that the defendant MG was involved in this case. Therefore the public prosecutor maintained the charges against the defendant CG pursuant to Article 146 of the Penal Code on serious maltreatment; however the public prosecutor asked the court to acquit the defendant MG.

The hearing to announce the decision will be held on 30 June 2011 at 2pm.

5. Light Maltreatment, Case No. 40/PEN/2011/TDS

A hearing in this case was conducted on 21 June 2011 and was presided over by a panel of judges comprising Florencia Freitas, Ana Bella Cabral Ferreira, and José Maria de Araújo. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender Marçal Mascarenhas.

The three defendants AM, DdC and PMdA were charged with committing an offence against four victims, namely JP, LN, DAC and DS, that allegedly occurred on 1 January 2010 in Ainaro District.

This hearing was scheduled for 10am, however due to problems with transport from the police office and the poor condition of the roads the defendant and the police only arrived in Suai at 12 midday, after departing from Ainaro at 9am. The hearing could not be held at 2pm because another case had been scheduled for that time, therefore the hearing took place at 7.10pm (outside of working hours).

For this reason only one of the defendants provided testimony due to time constraints.

In the indictment read out by the judge it was alleged that on 1 January 2011 at approximately 1am the victim DAC approached the home of the defendant AM and the

defendant DdC shot the victim with a dart that struck the victim in the backside. The defendant PMdA also struck the victim and split his lip. In addition to being struck by the defendant DdC, the victim DAC was also struck by the defendant AM and suffered serious injury. The victims JP, LN and DS who were at the scene were also struck. The indictment stated that 3 defendant chased the victims to the home of the victim DAC and damaged the property of the victim such as a tape recorder, tarpaulin, plates and 2 chairs.

During the hearing the defendant PMdA testified that they were attacked first by the aforementioned victims in the home of PMdA. At that time the defendant and the victim were punching each other. The defendant PMdA struck the victim and split his lip and the victim intended to slash the defendant with a machete but he did not manage to do so. The defendant handed over the machete to the village chief VAC. After that the victims JP, LN and the defendant PMdA punched each other and the victim JP tried to stab the defendant and the victim LN took out a dart in order to shoot the defendant, but the two of them did not manage to injure the defendant.

The defendant managed to chase the victims to the home of DAC and threw rocks at the house, destroying property such as 2 wooden chairs, a door, CD and a tape recorder. After that they went home.

The aforementioned property was handed over to the village chief by the defendant and the village chief handed the property over to the police.

The Public Prosecutor charged the defendants pursuant to Article 145 of the Penal Code on light maltreatment and Article 258 of the Penal Code on minor damage of property.

Because it was too late (8pm) to continue the hearing, and considering that it had taken more than an hour to hear the testimony of one defendant, the court adjourned the hearing, even though 2 defendants and 4 witnesses were present. The panel of judges scheduled the next hearing for 5 October 2011 at 9am in Ainaro District to be conducted by the mobile court. Therefore the testimony of the defendant PMdA will not be considered valid because a new trial will take place in October 2011 (more than 30 days).

6. Light Maltreatment, Case No. 28/PEN/2011/TDS

A hearing in this case was conducted on 22 June 2011 and presided over by single judge Ana Bella Cabral Ferreira. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender Marçal Mascarenhas.

The three defendants in this case are the siblings NCH, JCH and ICH (female) who were charged with committing an offence against the victim TMB in Maliana District on 17 March 2011.

The victim came to the home of the defendants and yelled out a request to have water diverted to her rice field. Upon hearing the victim yelling out the defendants came outside and had an argument. Not long after the defendant ICH and the victim hit each other. The victim suffered injuries to her neck and cheek and did not work for a week.

The Public Prosecutor charged the defendants pursuant to Article 145 of the Penal Code on light maltreatment.

During the hearing to announce the final decision the judge decided not to imprison the defendants but only to order them to pay a fine within 30 days, whereby each defendant would have to pay a dollar a day. If they do not pay then they will be imprisoned for 20 days. In relation to compensation for the victim, each defendant must pay \$25, and each defendant must pay \$10 for court costs. Immediately after the hearing the three defendants paid the fine determined by the court.

7. Rape Case, First Hearing/2011/TDS

A hearing in this case was conducted on 22 June 2011 and was presided over by single judge José Maria de Araújo. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender Marçal Mascarenhas.

The defendant AA was charged with raping the victim IdA, who was his daughter in law, on 18 August 2008 in Nunumogue Village, Hatubuilico, Ainaro District.

In the first hearing of this trial the judge read out the charges of the Public Prosecutor which stated that on 18 August 2008 at 7pm the defendant raped the victim. At that time the victim was cooking in the kitchen and the defendant approached the victim and raped her.

The defendant claimed that the sexual intercourse was consensual and there was no force. The defendant avoided the police for three years and the police only captured him on 20/6/2011. During that period the defendant fled to three districts, namely Ainaro, Maliana and Suai. He now resides in Suai District, Raibaba Village, Zumalai, and has a new wife.

The Public Prosecutor charged the defendant pursuant to Article 285 of the Indonesian Penal Code and Articles 171 and 172 of the Timor-Leste Penal Code. The court applied restrictive measures in the form of temporary detention against the defendant.

8. Rape, Case No. 69/PEN/2009/TDS

A hearing in this case was conducted on 22 June 2011 and was presided over by single judge José Maria de Araújo. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender Marçal Mascarenhas.

The defendants in this case MG and KR (female) allegedly committed the offence against the victim DdJ. The alleged incident occurred in 2005 in Ainaro District. The Public Prosecutor charged the defendant pursuant to Article 173 of the Penal Code on aggravated rape, and Article 177 on sexual abuse of a minor.

In the recommendation of sentence read out by the judge, it was alleged that the rape was committed by the defendant (teacher) against the victim. As a result of this incident the

victim became pregnant and fled to her family. The relationship between the two of them was similar to that of a father and an adopted daughter. It was not proven that the defendant KR helped the defendant MG to carry out the aforementioned act.

The court sentenced the defendant MG to four years imprisonment and ordered the defendant to pay compensation of \$500 and court costs of \$20. The defendant KR was acquitted because it was not proven that she was involved in the aforementioned act.

9. Rape, Case No. 32/PEN/2008/TDS

A hearing in this case was conducted on 22 June 2011 and was presided over by a panel of judges comprising Ana Bella Cabral Ferreira, José Maria de Araújo, and Florença Freitas. The Public Prosecution Service was represented by António da Silva, and the defendant was represented by Public Defender João Henrique.

There were four defendants in this case, namely AA, JT, AG and GM who were charged with committing an offence against the victim MMT (14 years old). It is alleged that this case occurred on 25 June 2007 in Cendana 2, Suai Kota.

According to the indictment read out by the judge, it is alleged that on the aforementioned date the victim was at the Suai market and it was raining. The defendant AA passed by on a motorcycle and saw the victim. The defendant stopped and offered to take the victim home. Prior to this occurring, they did not know each other. The victim got on the motorcycle but the defendant did not take her home, rather he rode around until night time. At 7pm the defendant took the victim to his house and the other three defendants were there. At that time the defendant AA raped the victim.

The victim testified that at that time she was raped, but only the defendant AA raped her because the victim managed to escape from the scene.

The Public Prosecutor recommended for the court to sentence the defendant AA to 8 years imprisonment and to sentence the other three defendants to 3 years imprisonment. The Public Prosecutor also asked for the defendants to pay compensation of US\$ 2000 pursuant to Article 287 of the Indonesian Penal Code, as well as Articles 53, 172, 173 (d), 23 and 24 of the Timor-Leste Penal Code that carry a sentence between 9 and 15 years imprisonment. The Public Defender rejected compensation of that amount because he claimed that the defendants were students and farmers (2 were at university and 2 were farmers).

The final decision will be announced on 4 July 2011 at 2pm.

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