



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

JUSTICE UPDATE
Period : January 2007
Publication : 25 January 2007

**THE COURT CONDUCTED A HEARING FOR ONE OF THE WITNESSES
IN THE PRESENCE OF OTHER CO-WITNESSES TO BE
AT THE COURTROOM**

1. Introduction

On 23 January 2007, The Dili District Court continued to hear the case of Rogério Lobato and his co-accused at the Court of Appeal of Timor-Leste. The hearing of evidence conducted in the case against the defendant Rogério Lobato and other co-accused was to hear the witnesses of the Timor-Leste National Police Logistics among others: Sub-Inspector Felismino Maia, Adalberto Mau and Denis Galucho¹. As with the three members of the Logistics², the Court, through the panel of judges, investigated Jerónimo Lay da Costa Nunes, also known as RONI, the private driver of the defendant Rogério Tiago Lobato. The witness RONI was a member of PNTL and private driver for the defendant Lobato since 2004 up till 25 May 2006.

2. Statement from the witnesses

During the whole process of hearing, JSMP (*Judicial System Monitoring Program*) knew that the facts around the chronology of the withdrawal and distribution of URP uniform³ ordered by the defendant Lobato to the civilians began to be revealed. According to the statement from the witnesses, the Finance Director of PNTL received order from the defendant Lobato by telephone to deliver the uniforms to the defendant.

¹ Witness Denis Galucho did not appear at the hearing for witness conducted on 23 January 2007 at the Court of Appeal of Timor-Leste because he was under medical treatment in Bali-Indonesia.

² The three witnesses were all members of PNTL (Polícia Nacional de Timor-Leste).

³ URP stand for Unidade Reserva da Polícia. Besides that, URP is sometimes called Special Police. This Special Police Unit is tasked with guarding or patrolling along the border area between Timor-Leste and Indonesia.

The finance director then⁴ forwarded the order directly to the logistics officer in-charge of the police uniform by the name of Adalberto Mau to execute the order. The witness Adalberto stated that he did execute the order though by phone.

3. The Presence of Other Co-witnesses in Courtroom

JSMP finds that the incessant court hearing held for the case of the defendant Rogério Lobato and his co-accused was a good and progressive step in Timor-Leste's justice sector. As we know that committing crime by arming civilians becomes a key factor in restoring security situation that is most expected by whole community in Timor-Leste. However, JSMP is troubled when some co-witnesses who had been notified by the court to give their testimony at the hearing were also present at the courtroom at the same time while other was testifying. The witness almost present at the courtroom was Herónimo Lay da Costa, also known as RONI who had been notified by the court on 23 January 2007. JSMP observed carefully that the abovementioned witness was always present at the courtroom while other was testifying at the court hearing. In fact, he was one of the witnesses whom the court had notified.

The Article 263 of Criminal Procedures Code provides that:

- a. *While evidence is being presented, everyone who shall give their statement must remain outside the courtroom without access to any information on what is occurring during the judicial hearing.*
- b. *It is the responsibility of the court clerk to ensure that Article 263, item (1) is complied before and after the presentation of evidence.*

It is provided in the article 271 item (1) that the witnesses who have been notified by the court shall be heard one after another, in accordance with the list of witnesses to be heard, unless the judge decides otherwise under sufficient grounds.

During the trial for the criminal case of arming civilians, JSMP observed that the court actors attending the case did not take it seriously in processing the case. The procedure of examining the witnesses was carried out in accordance with article 271 item (1) above. However, the court actors did not fully comply with article 263 of Criminal Procedure Code.

JSMP knew exactly that the name of witness RONI had been scheduled by the presiding judge on 15 January 2007 to appear at the hearing due

⁴ The officer in charge of PNTL Finance Director at that time was Inspector Basílio de Jesus. Basílio de Jesus appeared before the court for questioning held on 22 January 2007 at the Court of Appeal of Timor-Leste.

on 23 January 2007, at 09.30am. JSMP finds, however, that the witness RONI appeared at all time before the courtroom for judicial inquiry and had access to information provided by other witness who was testifying before the Court.

A concrete example given by JSMP is that JSMP knows precisely that the witness RONI showed an active participation at the hearings for Afonso de Jesus, Basílio de Jesus, Miguel de Deus and Carlos do Costa do Rego. The four witnesses were also members of PNTL.⁵

A new question arises. Is it true that the court actors did not take it carefully to make the witnesses appear before the trial? Is true that the court actors violated article 263 item (2) of Criminal Procedure Code on persons who shall be heard before the court?

4. Discussion held by JSMP with court actors attending this case

1) JSMP held discussion with Prosecutor

JSMP held discussion with the court actors attending the case⁶ in order for them to verify it. As JSMP discussed with Prosecutor Bernardo C. Fernandes and Prosecutor Felismino Cardoso who attended the case, it was explained that, in accordance with article 263 of Criminal Procedure Code, any one who shall appear before the court hearing to testify as witness must not enter the courtroom while other witness is testifying. However Prosecutor Bernardo admitted that he did not know at that time that the witness was present at the courtroom. It was because there were many people in the courtroom. Therefore, he could not identify each of them and he had to concentrate attention on merely the witness being present before the courtroom to testify.

2) JSMP Held Discussion With Judge

JSMP had the same explanation from the judges who attended the case. Judge António admitted that the judges did know if the witness had been in the courtroom while the trial was taking place. The judges also did not know the witness. The court just gave order to the witnesses to appear before the court. Judge António Gonçalves told JSMP that the witness

⁵ JSMP finds that the witness RONI actively attended the hearing held on 22 January 2007. The Witness RONI took a seat right behind the family of the defendants.

⁶ JSMP held discussion with the International Prosecutors Bernardo C. Fernandes and Felismino Cardoso at the Office of the Prosecutor, Kaikoli-Dili, on 24 January 2007. Besides that, on the same date, JSMP held discussion with National Judge António Gonçalves and the International Judge Ivo Nelson de Caires Rosa Batista in his office at the Dili District Court to discuss the same issue.

should not have entered the courtroom.⁷ According to Judge António, if it really happened, then the police would be blamed for calling the person whom the police knew. It was also the fault of the court clerk who assisted the whole judicial proceedings. In accordance with article 263 item 2 of Criminal Procedure Code, the court clerk is responsible for complying with this provision before the trial begins. On the same occasion, Judge Ivo said that article 263 of Criminal Procedure Code applies to everyone. The court did not know that such unusual error occurred. Judge Ivo recognized that the panel of judges at that time could not identify each of those present at the courtroom.

3) JSMP Held Discussion with Lawyer

On the other hand, Lawyer Benevides Correia Barros expressed his opinion to JSMP that such a thing should not have happened.⁸ Anyone who has been notified by the court to appear as witness in that case must not take part at the trial. As the witness, one must remain distant from the courtroom.

5. Witness Obligation

JSMP observes that the questions asked by the lawyer mostly seemed to be the tricky ones which aimed at laying criminal responsibility on the witness who was testifying before the trial.

JSMP also observes that the court actors attending this case obliged the witnesses to answer every question asked to them,⁹ whereas in fact the rights and the provision have been provided in article 123 of Criminal Procedure Code on the rule of Examination of Witness.

Article 123 item (2) provides that:

A witness has no obligation to answer any question, if they find that the answer can lay criminal responsibility on them.

⁷ The name of the witness RONI was not set in the file case. Only the court can authorize the summons for the witness RONI, and anyone whose names were mentioned by other witnesses or the defendant at the hearing shall appear before the court in order to give their statement at the hearing.

⁸ JSMP interviewed the lawyer Benevides Correia Barros on 24 January 2007 in front of the Court of Appeal after the hearing was conducted. Benevides Correia Barros was the acting lawyer for the defendant Marcos Piedade, also known as LABADAIN, replacing the International lawyer Pedro Monteiro Andrade.

⁹ As it was stressed by presiding judge at the hearing for the witness Vicente da Conceição, also known as RAILOS, that only the defendant has the right to be willing or reluctant to answer the questions. As the witness, one should answer all the questions asked to him.

On the rule witness examination as provided in article 129, in particular, item (2), it states that:

Any tricky or wrong questions shall not be asked to the witness, that is, the questions which can obstruct the witness to answer with spontaneity and sincerity.

During the whole trial for this case, JSMP observes that the defense lawyer repeatedly asked tricky questions which could possibly aggravate the criminal responsibility of the witness who was giving testimony. On the other hand, the witness was obliged by the panel of judges to answer all questions asked to him. In fact, according to Criminal Procedure Code currently applicable, the rights and obligations of the witness are almost similar to the rights of the defendant as to whether or not he is willing or unwilling to answer the questions asked to him.¹⁰

When JSMP attempted to consult with the presiding judge for the case, it was explained by Judge Ivo that everyone who is summoned to appear before the court is to assist the court in order to find the truth. Thus, the witness had obligation to answer every questions asked by any parties, in accordance with article 123 item (1d) of Criminal Procedure Code. The witness can simply say whether he knows or he does not. If the questions tend to be tricky, in accordance with article 123 item (2) of Criminal Procedure Code, the witness has the right not to answer them because such questions aim at laying criminal responsibility on him.

6. Conclusion

After having all explanations confirmed, JSMP concludes that such mistake occurred due to the lack of good cooperation between the Court, Office of the Prosecutor and UNPOL/PNTL who were tasked to bring the witness before the court. On the other hand, the court clerk did not take it seriously in identifying the witnesses so as to avoid the presence of the witness at the courtroom before the trial begins.

7. Recommendations/suggestions

Having learned from the above mistake, JSMP would like to give the following recommendations:

1. JSMP recommends that the court clerk assisting the whole proceeding firstly make sure the identity of everyone present at the courtroom before the trial begins. The witness whom the court has notified is present at the courtroom must be taken outside in

¹⁰ The right of the defendant to freely declare willing or reluctant to make statement at the hearing has been provided in article 60 (c) of Criminal Procedure Code (Código Processual Penal).

accordance with the applicable Criminal Procedure Code, so that the witness cannot have access to statement or information given by other witness who testifies before the court.

2. JSMP recommends that UNPOL and PNTL officers tasked with security precautions inside and outside the courtroom check everyone present at the court. Police officers are not only to focus on security precautions but also identify the witnesses whom the court has notified. According to JSMP, PNTL or UNPOL officers in charge of calling the witness to appear before the court should perform their duties for security precautions by fully observing all legal aspects. Otherwise, all efforts and hard work will not be fruitful or bring the most expected results.
3. JSMP recommends that all court actors, in particular, single judge or the panel of judges who attends such a case always remind UNPOL/PNTL officers and court clerk at the courtroom of complying with article 263 of Criminal Procedure Code. According to JSMP, if no appropriate measures were taken to restore the judicial proceedings, the same mistake would repeat in the future.

FOR FURTHER INFORMATION PLEASE CONTACT:

Maria Vasconcelos

Acting Director, JSMP

Telephone: 332 3883

Email: vasconcelosmerry@yahoo.com