



JUDICIAL **SISTEM** MONITORING PROGRAMME

PROGRAMA DE MONITORIZASAUN DO **SISTEMA** JUDICIAL

Case Summary

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Summary of cases tried at the Suai District Court in the Second Week of February 2012

Introduction

Between 06 - 17 February 2012 JSMP continued its monitoring activities at the Suai District Court.

During this two week period JSMP was able to monitor hearings in 12 cases. These cases included 1 case involving criminal association (a group that aims to commit a crime), 4 cases involving ordinary maltreatment, 1 case of attempted murder, 3 cases of domestic violence, 1 case of rape and 2 cases of sexual assault.

Hearings were conducted in some of the aforementioned 12 cases; however others were adjourned because the parties did not appear in court for reasons that remain unclear. Defendants, witnesses and victims who were summoned to provide their testimony to the court did not appear at the scheduled times.

As usual this case summary aims to disseminate and provide updated information about the trial process that is taking place in each court and the trends that are being observed. Each summary provides a snapshot of the trial process in court as well as the legal options that are being applied by court actors in each of the cases proceeding to trial.

The information below summarizes each case that was taken to trial.

1. Crime of Criminal Association, Case No.86/PEN/2011/TDS

On 06 February 2012 the Suai District Court continued the trial of a case of criminal association registered as Case No.86/PEN/2011/TDS. There were four defendants in this case, namely FDC, VDA, JCH and HCS. The defendant FDC is currently serving a period of temporary detention and the other three defendants are under house arrest. The crime allegedly took place in Fatuberliu Sub-District, Manufahi District in 2002.

The trial was led by a panel of judges comprising Florença Freitas (presiding), Costanção Barros Basmery and Álvaro Maria Freitas. The Public Prosecution Service was represented by Oscar Silva Tavares (international) and António Tavares da Silva. The defendants were represented by public defender Marçal Mascarenhas.

11 witnesses were summoned by the court to appear in this trial, namely TM, AX, MX, VdC, JDL, CL, DF, CB, MIL, FM and JB.

Before the court the witnesses testified that they helped an organization named “*Support base for Falintil 75*” because the defendants lied to them and then they became members of this organization. They testified that they received three cards that they bought at different prices, firstly a FTL-RDT Card that cost US\$ 15, secondly a RDT Official Bulletin Card that cost US\$ 35.00 and thirdly a RDT Triangle Card that cost US\$ 60.00. The total amount of money spent was US\$ 110.00;

Previously a hearing in this case took place on 6 January 2012 where the defendants used their right to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code.

After hearing the testimony of the witnesses the court could not continue with the final recommendation of the prosecutor as it was already 9pm.

The trial was scheduled for the following day (7 February 2012) at 9am.

Then on 7 February 2012 the Suai District Court continued the trial by hearing final recommendations in this case.

The trial of this case was led by the same panel of judges mentioned above.

In relation to the aforementioned incident, and in accordance with the facts set out in the indictment that were examined during the trial, the public prosecutor conveyed his final recommendation and requested for the court to punish the defendant in accordance with the crime committed. The public prosecutor charged the defendants for violating articles 188 and 266 the Penal Code.¹

The lawyer representing the defendants requested for the court to acquit the defendants from all charges because the activities of the aforementioned organization did not cause other people to suffer any loss. Also the lawyer argued that there was no law that specifically dealt with illegal organizations.

The decision in this case will be announced on 23 February 2012 at approximately 10am.

2. Crime of Serious Maltreatment, Case No.39/PEN/2011/TDS

On 7 February 2012 the Suai District Court was supposed to convene to read out the decision in a case involving serious maltreatment registered as Case No. 39/PEN/2011/TDS. The three defendants in this case (JA, AC and AG) allegedly committed the crime against the victim ACL.

The hearing to announce the decision was led by judge Florençia Freitas, The public prosecution service was represented by Zélia Trindade and the defendant was represented by public defender João Henrique de Carvalho. However, the hearing did not take place because the victim added additional information about the impact of the violence, namely that the victim could no longer see out of the eye clearly as a result of the maltreatment suffered at the hands of the defendants.

Based on the request of the victim, the court asked the public prosecutor to organize a medical examination of the victim within 15 days. In relation to this delay the court announced that the trial would be continued on 22 February 2012 at 2pm.

3. Crime of Attempted Murder, Case No.155/PEN/2009/TDS

¹ Article 188 of the Timor-Leste Penal Code refers to an association or group with the aim of committing a crime, and Article 266 refers to ordinary fraud.

On 08 February 2012 the Suai District Court conducted a hearing in a case of attempted murder registered as Case No. 155/PEN/2009/TDS. The defendant SAM allegedly committed the crime against the victim LA. The victim was the stepchild of the defendant. The incident allegedly occurred on 19 May 2009 in Holbelis Village, Suai Sub-District, Covalima District.

The incident occurred because the victim was in charge of looking after the defendant's buffalo and the witness allowed the buffalo to enter into the field/plantation of JO and as a result some corn and cassava were damaged. The defendant became angry and maltreated the victim. The hearing was led by a panel of judges comprising Costançio Barros Basmery (presiding), Álvaro Maria Freitas and Florença Freitas. The Public Prosecution Service was represented by Oscar da Silva Tavares (international) and the defendant was represented by public defender Marçal Mascarenhas.

The hearing started with the reading out of the indictment by the public prosecutor who stated that on 19 May 2009 at approximately 7am the defendant maltreated or physically assaulted the victim by hitting him twice on the head with a piece of wood and slapping the cheek of the victim twice. Also, the defendant tied the victim with a piece of rope and hung him from a tree.

In relation to the aforementioned incident the public prosecutor charged the defendant for violating articles 23 and 24 of the Penal Code in conjunction with Article 138 of the Penal Code,² relating to the crime of murder.

Before the court the defendant rejected the charges of the public prosecutor, however the defendant testified that the incident occurred because JO (plantation owner) stoned and killed the buffalo that entered JO's plantation, which occurred because of the negligence of the victim. Therefore, the defendant called the victim and yelled at him and maltreated the victim as described in the indictment. However, the defendant testified before the court that he regretted his actions and promised not to repeat them in the future.

The witness AC was summoned by the court and told the court that the defendant did in fact maltreat the victim as described in the indictment, however the victim was not hung from a tree.

² Article 23 of the Timor-Leste Penal Code refers to attempt to commit a crime and Article 138 refers to murder.

The witness JLN then said that it was true that on 19 May 2009 the defendant tied the victim with some rope; however AC untied the victim before the defendant continued with his actions.

After hearing testimony from the witnesses who appeared in the aforementioned hearing the court announced that the trial would be adjourned until 21 February 2012. The trial will continue with the court examining the other witnesses who were summoned but had failed to appear.

4. Crime of Domestic Violence, Case No.83/PEN/2011/TDS

On 09 February 2012 the Suai District Court conducted a hearing in a case of domestic violence registered as Case No. 83/PEN/2011/TDS. The crime was allegedly committed by the defendant ACS against the victim LdJ on 17 November 2010 in Manutasi Village, Ainaro District.

The hearing was led by judge Florença Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was represented by public defender João Henrique de Carvalho.

The hearing started with the reading out of the indictment by the public prosecutor. The indictment stated that on 17 November 2010 at approximately 7pm the defendant hit the victim once on the neck and kicked the victim once in the stomach. The incident occurred because the victim returned home at night.

In relation to the aforementioned facts the public prosecutor charged the defendant with violating Article 145.1³ of the Penal Code in conjunction with articles 2, 3 and 35 of the Law Against Domestic Violence.

The defendant testified before the court and admitted that the charges of the public prosecutor were true; however the defendant explained that in fact the defendant did not commit the aforementioned actions against his wife, but the incident occurred because the victim came home at night.

³ Article 145.1 of the Timor-Leste Penal Code regarding ordinary maltreatment.

Then the victim testified before the court and confirmed the facts that were described in the prosecutor's indictment. However, the victim added that after the incident they had reconciled and were living together as husband and wife.

Based on the aforementioned facts the public prosecutor recommended that the defendant be sentenced to 1 year and six months imprisonment, to be suspended for three years.

The same request was submitted by the lawyer of the defendant, namely for the court to hand down a suspended sentence, because the defendant had admitted all of his actions and had expressed regret during the trial. In addition, the defendant also promised to not repeat this behavior in the future and the defendant is the provider for the family, which includes three children.

In reference to the aforementioned evidence, the court concluded that the actions of the defendant had fulfilled the crime set out in Article 145 of the Timor-Leste Penal Code and articles 2, 3 and 35 of the Law Against Domestic Violence. Therefore, the court sentenced the defendant to 8 months imprisonment, to be suspended for 2 years.

5. Crime of Domestic Violence, Case No.80/PEN/2011/TDS

On 10 February 2012 the Suai District Court was supposed to try a case of domestic violence registered as Case No. 80/PEN/2011/TDS. However, the trial could not take place in accordance with the schedule.

Based on information collected by JSMP, the judge presiding over this case was not at the court. However, JSMP did not manage to obtain detailed information about this impediment.

6. Crime of Domestic Violence, Case No.64/PEN/2011/TDS

On 15 November 2012 the Suai District Court conducted a hearing to read out its decision in a case of domestic violence registered as Case No. 64/PEN/2011/TDS. This case involved the defendant Claudinho Cardoso da Cruz who allegedly committed the crime against the victim Margerita Benu. This incident allegedly occurred on 13 April 2011 in a Sub-Village named Kampung Baru, Debos Village, Suai Sub-District, Covalima District.

The decision was read out by Judge Álvaro Maria Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was represented by public defender Marçal Mascarenhas.

Based on the facts examined during the trial the court was convinced that the defendant was guilty of committing the crime of ordinary maltreatment, which was categorized as domestic violence.

After examining all of the related evidence and facts the court decided that the most appropriate punishment would be to fine the defendant. Therefore the court sentenced the defendant to pay US\$ 50. The fine has to be paid within 100 days at a rate of 50 cents per day. The court emphasized that if the convicted person did not fulfill his obligation then he would have to serve two months imprisonment.

7. Crime of Rape, Case No. 123/PEN/2009/TDS.

On 15 February 2012 the Suai District Court was supposed to conduct a trial in a case of rape registered as Case No. 123/PEN/2009/TDS.

However the hearing could not take place because the defendant, who had been summoned by the court, did not respond to the summons without any explanation.

The hearing to announce the adjournment of the trial was led by judge Costanção Barros Basmery. The Public Prosecutor Service was represented by Zélia Trindade and the defendant was represented by public defender Marçal Mascarenhas.

The trial was adjourned until 21/02/2012 at 10am.

8. Crime of Sexual Abuse of a Minor, Case No. 06/PEN/2010/TDS

On 16 February 2012 the Suai District Court conducted a hearing in a case of sexual assault against a minor that was registered as Case No. 06/PEN/2010/TDS. The defendant FdC allegedly committed the crime against the victim MS. This case allegedly occurred in Matai Village, Maukatar Sub-District, Covalima District on 30 December 2010.

The trial was led by a panel of judges comprising judge Álvaro Maria Freitas (presiding), Costanção Barros Basmery and Florença Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was represented by public defender Marçal Mascarenhas.

The hearing commenced with the reading out of the indictment by the public prosecutor. The indictment stated that on 30 December 2009 at 10am the victim was sleeping in a bed made of bamboo and the defendant deliberately groped the victim and wanted to use force to have sexual relations with the victim, although the act was not carried out. The indictment also stated that the victim was very upset and humiliated by the actions of the defendant because she is a minor.

In relation to the aforementioned facts, the public prosecutor charged the defendant for violating articles 23 and 24 of the Penal Code in conjunction with Article 177 of the Timor Leste Penal Code.⁴

However, before the court the defendant rejected all of the charges of the public prosecutor. The defendant explained that the aforementioned incident did not occur in accordance with the circumstances described in the indictment, but because the defendant and the victim had a romantic relationship and the defendant testified that all he did was hold the hand of the victim.

However, the victim testified that the defendant committed the actions described in the indictment. The victim then testified that the defendant wanted to use force to have sexual relations with the victim; however the act did not take place because the older sibling of the victim (PJB) stopped it.

The witness PJB did not attend the hearing even though he had been properly summoned by the court. Therefore the final recommendations could not be heard.

The trial was adjourned until 28 February 2012 at 9am.

9. Crime of Ordinary Maltreatment, Case No. 73/PEN/2011/TDS.

⁴ Article 177 of the Timor-Leste Penal Code regarding sexual abuse of a minor.

On 17 February 2012 the Suai District Court conducted a hearing to validate a settlement in a case of ordinary maltreatment registered as Case No. 73/PEN/2011/TDS. This case involved 4 defendants, namely Maria Goreti, Cançio Nahak, Olivia Barrosno and Terezinha Hoar who allegedly committed the crime against the victim Ana Barros. This case allegedly occurred in Loro Sub-Village, Suai Loro Village, Suai, Covalima District on 7 July 2011.

The hearing was led by single judge Álvaro Maria Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was given legal representation by public defender João Henrique de Carvalho.

The hearing commenced with the reading out of the indictment by the public prosecutor. The indictment of the public prosecutor stated that on 07 July 2011 at approximately 9am the defendants assaulted the victim and ripped the victim's clothes.

In relation to this incident the public prosecutor charged the defendants for violating Article 145.1 of the Penal Code regarding ordinary maltreatment, which carries a penalty of 3 years imprisonment or a fine.

However, the court tried to mediate a peaceful settlement between the parties in accordance with Article 145.2 and Article 262 of the Penal Code.

In accordance with the peaceful settlement the victim was willing to withdraw her complaint, however the victim asked for the court to order the defendants to pay compensation of US\$ 50.

The court agreed to this request and therefore in accordance with articles 106 and 109 of the Criminal Procedure Code, and articles 71 and 216 regarding the legitimacy of the aggrieved party to withdraw a complaint, the court acquitted the defendant from the charges.⁵

10. Crime of Ordinary Maltreatment, Case No. 98/PEN/2011/TDS

On the same day (17/02/2012) the Suai District Court conducted a trial to validate a settlement in a case of ordinary maltreatment registered as Case No. 98/PEN/2011/TDS. This case involved

⁵ Articles 106 and 109 of the Timor-Leste Penal Code regarding nature of the crime and withdrawing a complaint.

the defendants Olivio Alves, José Francisco Soares and Mario Moniz who allegedly committed the crime against the victims Apolonario Sanches and Mario Sanches.

The hearing was led by single judge Florença Freitas. The Public Prosecution Service was represented by Zélia Trindade, and the defendant was represented by public defender Marçal Mascarenhas and private lawyer Lourenço de Deus Mau Lulo.

In this hearing the victims told the court that they were willing to withdraw their complaint. However, the victims added that although they didn't want anything from the defendants, they asked that the defendants do not repeat this type of act in the future.

Based on the request of the victims, pursuant to Article 145.2 of the Penal Code and articles 71 and 216 of the Criminal Procedure Code, the court decided to acquit the defendants from the criminal charges.

11. Crime of Ordinary Maltreatment, Case No. 70/PEN/2011/TDS

On 17 February 2012 the Suai District Court conducted a hearing in a case of ordinary maltreatment registered as Case No. 70/PEN/2011/TDS. The defendant LdG allegedly committed the crime against the victim EM. This case allegedly occurred in Dais Sub-Village, Belekasak Village, Maukatar Sub-District, Covalima District on 22 June 2011.

The hearing was led by single judge Álvaro Maria Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was given legal representation by public defender João Henrique de Carvalho.

The hearing commenced with the reading out of the indictment by the public prosecutor. The indictment stated that on 22 June 2011 the defendant hit the victim once above the eye. This action resulted in the victim suffering injury to the eye.

Before the court the defendant used his right to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code.⁶

⁶ Article 60 (c) of the Timor-Leste Criminal Procedure Code states "to freely decide to make or not to make statements and to do it, even at his or her own request, at any stage of the investigation or of the trial hearing, except as provided in paragraph 61(a)";

However, before the court the victim confirmed the facts described in the indictment. Then the victim testified that she was humiliated by the incident and also because she works as a teacher at the Dais Primary School.

The witness CA then testified that the victim yelled and had initially hit the defendant, and the defendant reacted by hitting the victim in return and struck the victim in the eye. In addition, the witnesses EU and FI were also summoned by the court, and their testimony collaborated that of the witness CA.

In relation to the aforementioned facts, in her final recommendation the public prosecutor charged the defendant for violating Article 145.1 of the Penal Code. Pursuant to the aforementioned charge the public prosecutor asked for the court to sentence the defendant to one year imprisonment, to be suspended for two years and order the defendant to pay the victim compensation of US\$ 80.00.

The lawyer of the defendant asked the court to hand down a suspended sentence against his client, because the defendant was a first time offender and also was the head of his family and breadwinner.

In consideration of the aforementioned facts, the court sentenced the defendant to 10 months imprisonment, suspended for one year and six months. The court sentenced the defendant to pay compensation to the victim of US\$ 50.00 as well as court costs of US\$ 10.00.

12. Crime of Sexual Assault, Case No.03/PEN/2007/TDS

On 17 February 2012 the Suai District Court conducted a hearing in a case of sexual assault registered as Case No. 03/PEN/2007/TDS. The defendant JMS allegedly committed the crime against the victim EFS. This case allegedly occurred in Ainaro District on 01 July 2000.

The trial was led by a panel of judges comprising judge Costanção Barros Basmery (presiding), Álvaro Maria Freitas and Florença Freitas. The Public Prosecution Service was represented by Zélia Trindade and the defendant was represented by public defender João Henrique de Carvalho.

The hearing commenced with the reading out of the indictment by the public prosecutor. The indictment stated that on 01 July 2000 at approximately 1am, the victim was sleeping with her older sibling MM and the defendant was sleeping close to them. The defendant took advantage of this situation and groped the body of the victim.

The indictment also stated that the victim completely rejected the actions of the defendant, but the defendant used force to carry out his actions.

In relation to this incident, the public prosecutor charged the defendant with Article 289 of the Indonesian Penal Code.

Before the court the defendant used his right to remain silent in accordance with Article 60 (c) of the Criminal Procedure Code.

The victim testified before the court and confirmed the facts described in the indictment of the public prosecutor. Namely that it was true that on 01 July 2000 at approximately 1am the defendant touched and groped her body. In addition, the victim testified that after the incident the defendant threatened the victim not to tell anyone about the incident otherwise he would kill her.

The witness MM who was summoned by the court testified that it was true that the victim was sleeping next to the witness, however MM did not know about the incident. However, at the same opportunity MM testified before the court that the defendant had only pinched the foot of the victim.

In relation to the aforementioned facts, in her final recommendation the public prosecutor requested for the court to provide justice to the victim.

The legal representative of the defendant asked for the court to hand down a suspended sentence against the defendant, because the defendant had expressed regret and had promised not to repeat such actions in the future.

The decision will be announced in a hearing on 23/02/2012 at approximately 10am.

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